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8–6–04 Friday
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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[BCIS No. 2152–01]

RIN 1615–AA63

Employment Authorization Documents; Correction

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Interim rule: correction.

SUMMARY: The Department of Homeland Security (DHS) published in the **Federal Register** of July 30, 2004, an interim rule which amended the DHS regulations governing issuance of Employment Authorization Documents (EADs). The interim rule contained an error that is corrected in this document.

DATES: This correction is effective July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Program and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., ULLICO Building, Third Floor, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on July 30, 2004 (69 FR 45555), the interim rule amending part 274a contains an error that is in need of correction.

Correction of Publication

■ Accordingly, the publication on July 30, 2004 (69 FR 45555), of the interim rule that was the subject of FR Doc. 04–16938 is corrected as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

§ 274a.12 [Corrected]

■ 1. On page 45557, in the first column, amendatory instruction 2d is corrected to read: "Revising paragraph (c), introductory text;"

Dated: August 3, 2004.

Richard A. Sloan,

Director, Regulations and Forms Services Division.

[FR Doc. 04–17971 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18758; Directorate Identifier 2004–NE–24–AD; Amendment 39–13763; AD 2004–16–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE); CT7–2D1 Turboshaft Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CT7–2D1 turboshaft engines. This AD requires replacing certain turbine stage 2 aft cooling plates, part number (P/N) 6064T0P02. This AD results from an uncontained failure of a turbine stage 2 aft cooling plate in a GE CT7 turboprop engine. We are issuing this AD to prevent a similar uncontained failure of turbine stage 2 aft cooling plates in GE CT7–2D1 turboshaft engines.

DATES: This AD becomes effective August 23, 2004.

We must receive any comments on this AD by October 5, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: 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.

You may examine the comments on this AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mark J. Bouyer, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7757; fax (781) 238–7755.

SUPPLEMENTARY INFORMATION: In July of 1999, an uncontained failure of a turbine stage 2 aft cooling plate occurred on a GE CT7 turboprop engine. An investigation indicated that the electro-discharge (EDM) machining of the cooling airholes caused microcracks in the walls of the airholes that could propagate through the turbine stage 2 cooling plate and result in an uncontained engine failure. We issued AD 2002–01–03 to prevent an uncontained failure of turbine stage 2 aft cooling plates in GE CT7 turboprop engines. In October of 2003, the manufacturer informed us of a similar problem with GE CT7–2D1 turboshaft engines. This AD requires replacing turbine stage 2 aft cooling plates, P/N 6064T07P02, with serial numbers (SNs) GFFN****, GFFP****, GFFR0*** through GFFR7***, GFFR81** through GFFR89**, GFFR8A** through GFFR8G**, GFFR8H92 through GFFR8H99, and GFFR8H9A through GFFR8H9N. Asterisks represent any subsequent number or letter that follow the root SN. This condition, if not corrected, could result in an uncontained failure of turbine stage 2 aft cooling plates in GE CT7–2D1 turboshaft engines.

FAA's Determination and Requirements of This AD

Although no aircraft that are registered in the United States use these engines, the possibility exists that the engines could be used on aircraft that

are registered in the United States in the future. The unsafe condition as previously described in GE CT7 turboprop engines is likely to exist or develop in GE CT7–2D1 turboshaft engines because they are of the same type design. We are issuing this AD to prevent an uncontained failure of turbine stage 2 aft cooling plates in GE CT7–2D1 turboshaft engines. This AD requires replacing turbine stage 2 aft cooling plates, P/N 6064T07P02, with SNs GFFN****, GFFP****, GFFR0*** through GFFR7***, GFFR81** through GFFR89**, GFFR8A** through GFFR8G**, GFFR8H92 through GFFR8H99, and GFFR8H9A through GFFR8H9N at the next disassembly of the gas generator turbine rotor assembly at an FAA-approved overhaul facility, but not to exceed 5,000 cycles-since-new.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we posted new AD actions on the DMS and assigned a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form "Docket No. FAA–200X–XXXXX." Each DMS docket also lists the Directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. FAA–2004–18758; Directorate Identifier 2004–NE–24–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–16–07. General Electric Company: Amendment 39–13763. Docket No. FAA–2004–18758; Directorate Identifier 2004–NE–24–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 23, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CT7–2D1 turboshaft engines with turbine stage 2 aft cooling plates, part number (P/N) 6064T07P02, and serial numbers (SN) starting with GFFN****, GFFP****, GFFR0*** through GFFR7***, GFFR81** through GFFR89**, GFFR8A** through GFFR8G**, GFFR8H92 through GFFR8H99, and GFFR8H9A through GFFR8H9N installed. Asterisks represent any subsequent number or letter that follow the root SN. These engines are installed on, but not limited to, Sikorsky S–70 helicopters.

Unsafe Condition

(d) This AD results from an uncontained failure of a turbine stage 2 aft cooling plate in a GE CT7 turboprop engine. We are issuing this AD to prevent a similar uncontained failure of turbine stage 2 aft cooling plates in GE CT7–2D1 turboshaft engines.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Cooling Plate Removal

(f) At the next disassembly of the gas generator turbine rotor assembly at an FAA-approved overhaul facility, but not later than 5,000 cycles-since-new, replace any turbine stage 2 aft cooling plate, P/N 6064T07P02, with SNs starting with GFFN****, GFFP****, GFFR0*** through GFFR7***, GFFR81** through GFFR89**, GFFR8A** through GFFR8G**, GFFR8H92 through GFFR8H99, and GFFR8H9A through GFFR8H9N, with a cooling plate that does not have a SN specified in this AD.

(g) After the effective date of this AD, do not install stage 2 aft cooling plate, P/N

6064T07P02, SNs GFFN****, GFFP****, GFFR0*** through GFFR7***, GFFR81** through GFFR89**, GFFR8A** through GFFR8G**, GFFR8H92 through GFFR8H99, and GFFR8H9A through GFFR8H9N into any engine.

Material Incorporated by Reference

(h) None.

Related Information

(i) GE CT7–TS Alert Service Bulletin 72–A0032, dated June 11, 2003, provides additional information regarding the disassembly of the gas generator turbine rotor assembly.

Issued in Burlington, Massachusetts, on July 29, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–17755 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2003D–0545]

Guidance for Industry: Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 4); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 4)." The guidance responds to various questions raised about section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which require facilities that manufacture/process, pack, or hold food for consumption in the United States to register with FDA by December 12, 2003.

DATES: Submit written or electronic comments on the agency guidance at any time.

ADDRESSES: You may submit comments, identified by Docket No. 2003D–0545, by any of the following methods:

- 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.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2003D–0545 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default/htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, 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: Melissa S. Scales, Office of Regulations and Policy (HFS–24), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1720.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58894), FDA issued an interim final rule to implement section 305 of the Bioterrorism Act. The registration regulation requires facilities that manufacture/process, pack, or hold food (including animal feed) for consumption in the United States to register with FDA by December 12, 2003.

On December 4, 2003, FDA issued the first edition of a guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities." The second edition of this guidance was issued on January 12, 2004, and the third edition on February 17, 2004. The guidance announced by this document entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 4)" is a revision of the February 17, 2004, guidance and responds to additional questions about the interim final rule on registration. The guidance is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart H.

FDA wishes to highlight one issue clarified in the fourth edition of the food facility registration guidance, the appropriate designation of a U.S. agent by a foreign food facility. Since the interim final rule published, several individuals have notified FDA that, although listed in a facility's registration as its U.S. agent, the individual had not agreed to serve as the facility's U.S. agent. Question 14.20 in the fourth edition clarifies how FDA will handle the registration of a facility when the agency is notified that the individual listed as the facility's U.S. agent disagrees with that designation.

FDA is issuing the guidance entitled "Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 4)" as a level 1 guidance. Consistent with FDA's good guidance practices (GGPs) regulation § 10.115 (21 CFR 10.115), the agency will accept comments on this guidance, but it is implementing the guidance immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the Bioterrorism Act requires covered facilities to be registered with FDA by December 12, 2003. Clarifying the provisions of the interim final rule will facilitate prompt registration by covered facilities and thus, complete implementation of the interim final rule.

As noted in previous notices announcing the availability of guidance for food facility registration, FDA continues to respond to requests for clarification of the registration interim final rule by providing guidance in a question-and-answer format. The agency is maintaining all responses to questions concerning food facility registration in a single document that is periodically updated as the agency responds to additional questions. The following four indicators are employed to help users of the guidance identify revisions: (1) The guidance will be identified as a revision of a previously issued document, (2) the revision date of the guidance will appear on its cover, (3) the edition number of the guidance will be included in its title, and (4) new questions and answers will be identified as such in the body of the guidance.

II. Comments

Interested persons may, at any time, submit written or electronic comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www/cfsan.fda.gov/guidance.html.*

Dated: August 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–18057 Filed 8–4–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 519

RIN 0702–AA40–U

Publication of Rules Affecting the Public

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is revising our rule concerning the publication of rules affecting the public to incorporate requirements and policies required by various acts of Congress and Executive Orders. This revision also incorporates changes to program proponency and policies within the Department of the Army. This rule finalizes the proposed rule that was published in the **Federal Register** on April 7, 2004.

DATES: *Effective Date:* September 7, 2004.

ADDRESSES: U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–RP, 7701 Telegraph Road, Alexandria, VA 22315–3860.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Bowen, Army Federal Register Liaison Officer, Alexandria, VA at (703) 428–6422 or Mrs. Brenda Kopitzke, Alternate Army Federal Register Liaison Officer, Alexandria, VA at (703) 428–6437.

SUPPLEMENTARY INFORMATION:

A. Background

In the April 7, 2004, issue of the **Federal Register** (69 FR 18314), the Department of the Army issued a proposed rule to revise 32 CFR 519. This final rule prescribes procedures and responsibilities for publishing applicable Department of the Army policies, practices, and procedures as required by statutes. It also delineates responsibilities for complying with this regulation, the Regulatory Flexibility Act, 5 U.S.C. 601–612 (E.O. 12866), and the Congressional Review Act (CRA, 5 U.S.C. Chapter 8), within the Department of the Army. The Department of the Army received responses from two commentors. No substantive changes were requested or made; however, we accepted and incorporated administrative changes to the final rule to put all verbs into the present tense and to adopt a consistent way of expressing requirements, recommendations, and discretionary actions.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–612, which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Department of the Army has determined that this rule will have no significant economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866

The Department of the Army has determined that according to the criteria defined in Executive Order 12866, this rule is not considered a significant regulatory action.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

List of Subjects in 32 CFR Part 519

Administrative practices and procedures.

■ For the reasons stated in the preamble, the Department of the Army revises 32 CFR part 519 to read as follows:

PART 519—PUBLICATION OF RULES AFFECTING THE PUBLIC

Subpart A—General

Subpart B—Information To Be Published in the Federal Register

Subpart C—Inviting Public Comment on Certain Proposed Rules and Submission of Petitions

Authority: Sec. 3012, Pub. L. 84–1028, 70A Stat. 157, (10 U.S.C. 3013); sec. 3, Pub. L. 79–404, 60 Stat. 238, (5 U.S.C. 552).

Subpart A—General

§ 519.1 Purpose.

This part prescribes procedures and responsibilities for publishing certain Department of the Army policies, practices and procedures in the **Federal Register** as required by statute, and for inviting public comment thereon, as appropriate. This regulation implements portions of the Administrative Procedure Act (APA), 5 U.S.C. 551; Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(1), as implemented by 32 CFR Part 335; Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), as implemented by 1 CFR Chapter 1; Congressional Review Act (CRA), 5 U.S.C. Chapter 8; Executive Order 12866 of September 30, 1993; and DODD 5025.1, DOD Directives System.

§ 519.2 Explanation of terms.

(a) *Rule.* The whole or a part of any Department of the Army Statement (regulation, circular, directive, or other media) of general or particular applicability and future effect, which is designed to implement, interpret, or prescribe law or policy or which

describes the organization, procedure, or practice of the Army.

(b) **Federal Register**. A document published daily, Monday through Friday (except holidays), by the Office of the Federal Register, to inform the public about the regulations of the executive branch and independent administrative agencies of the U.S. Government. The **Federal Register** includes Presidential proclamations, Executive orders, Federal agency documents having general applicability and legal effect or affecting the public, and documents required to be published by Act of Congress.

(c) *Code of Federal Regulations*. The annual codification of rules published by each Federal Agency. It is divided into 50 titles representing broad subject areas for each Federal Agency and these titles are further subdivided into Chapters, Subchapters, Parts, and Subparts. Army documents are published in Title 32, National Defense, Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property. (The **Federal Register** and the Code of Federal Regulations must be used together to determine the latest version of any given rule.)

(d) *Closed Meeting*. A meeting that is closed to the public.

(e) *Open Meeting*. A meeting that is open to the public.

§ 519.3 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Army (AASA) acts as the regulatory officer and has oversight of the Army Federal Regulatory Program and Unified Agenda. The AASA coordinates with Assistant Secretary of the Army (Civil Works) (ASA (CW)) and the Deputy Chief of Staff, G–1 (DCS, G–1) to ensure the regulatory requirements and functions are properly executed.

(b) The ASA (CW) submits the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(c) The DCS, G–1 develops policy and direction for the Rulemaking Program for the Department of the Army.

(d) The U.S. Army Records Management and Declassification Agency (RMDA) is responsible for policies concerning Department of the Army announcements and rules (proposed, interim, and final) published in the **Federal Register**, and for ensuring Army compliance with this part. The RMDA will—

(1) Assist the officials listed in Table 1 of this section in the performance of their responsibilities.

(2) Represent the Army in submitting to the Office of the Federal Register (OFR) any matter published per this part.

(3) Submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(4) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(e) The U.S. Army Corps of Engineers (USACE) will—

(1) Represent the Army in submitting to the OFR only those Civil Works Program rules (proposed, interim, and final) codified in Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property of the CFR, subject to the terms of this part.

(2) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(3) When submitting rules codified in Titles 33 and 36 of the CFR, USACE may coordinate directly with OFR (in lieu of RMDA) but must otherwise comply with the provisions of this part. In determining the applicability of this regulation to its rulemaking activities, Army Civil Works rulemaking proponents may replace "RMDA" with "USACE," wherever it appears in the text of this part.

(f) The officials listed in Table 1 of this section (hereinafter referred to as proponents) are responsible for:

(1) Ensuring maximum practicable participation of the public in the formulation of Army rules that affect the public by allowing public comments in proposed rules. Where deemed appropriate by the Army proponents, the public should participate in consensual mechanisms, such as negotiated rulemaking.

(2) Determining which matters within their areas of jurisdiction must be published in accordance with §§ 519.8 through 519.14, and for submission actions specified in §§ 519.15 through 519.22.

(g) Legal officers and staff judge advocates supporting the proponents will provide legal advice and assistance in connection with proponent responsibilities contained herein.

TABLE 1.—RULEMAKING PROPONENTS

Official	Area of jurisdiction
Administrative Assistant to the Secretary of the Army	Immediate Office of the Secretary of the Army and the Office of the Administrative Assistant.
Director of the Army staff	Elements, Office of the Chief, U.S. Army.
Head of each Army staff agency	Headquarters of the agency and its field operating and staff agencies (including the Installation Management Agency (IMA)).
Commander, MACOM	Headquarters of MACOM and all subordinate activities and units.
RMDA	All other Army elements not covered above.

§ 519.4 Designation of Rulemaking Coordinators.

The officials listed in Table 1 of § 519.3 will designate Rulemaking Coordinators to perform the duties prescribed by §§ 519.15 through 519.22 of this part for their areas of functional responsibility. At the time of designation, RMDA (AHRC–PDD–RP) will be informed of the name and telephone number of the designated individual. The designee will perform the following duties:

(a) Ensure that all rules and notices to be published comply with the **Federal Register** format.

(b) Transmit material to RMDA (AHRC–PDD–RP) and provide RMDA with the name, office symbol, and telephone number of the action officer for each rule or general notice for inclusion in the **Federal Register**.

(c) Coordinate with Publication Control Officers to ensure submission of Statements of Compliance required by § 519.5.

(d) Notify RMDA (AHRC–PDD–RP), 7701 Telegraph Road, Alexandria, VA 22315–3860, when a regulation published in the **Federal Register**

becomes obsolete or is superseded by another regulation.

§ 519.5 Statement of compliance.

In order to ensure compliance with this part, no rule will be issued unless there is on file with RMDA (AHRC–PDD–RP) a statement to the effect that it has been evaluated under the provisions of this part. If the proponent determines that the provisions of this part are inapplicable, such determination will be explained in the statement.

§ 519.6 Submission of publications for printing.

When Army-wide publications or directives are transmitted to the Director, U.S. Army Publishing Directorate (USAPD) for publication, the DA Form 260 (Request for Printing of Publication) or other transmittal paper will contain a statement that the directive has been processed for publication in the **Federal Register** or that it falls within the exempted category. USAPD will not publish any rule unless this statement is on DA Form 260. A copy of DA Form 260 may be submitted to RMDA (AHRC–PDD–RP) in lieu of the statement required by § 519.5.

§ 519.7 Regulatory review.

(a) Proponents of Army regulations will participate in the regulatory process and adhere to the regulatory process as prescribed in this regulation when reviewing their existing publications. This review will follow the same procedural steps outlined for the development of new regulations.

(b) In selecting regulations to be reviewed, proponents will consider such criteria as:

(1) The requirement for the regulation.

(2) Costs and benefits of the regulation to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures.

(3) The type and number of complaints or suggestions received.

(4) Burdens imposed directly or indirectly by the regulation to both the public and other government entities.

(5) Elimination of inconsistent, incompatible, overlapping or duplicative regulations.

(6) Length of time since the regulation has been reviewed for scientific, technological, economical, or administrative changes.

Subpart B—Information To Be Published in the Federal Register

§ 519.8 General.

The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies, practices, procedures, and other information concerning the Department of the Army be published in the **Federal Register** for the guidance of the public. In addition, various statutory and nonstatutory authorities, as applicable, may require certain actions and studies be performed in conjunction with the publication of the regulation. In general, this information explains where, how, and by what authority the Army performs any of its functions that affect the public. This subpart describes what information must be published and the effect of failing to publish it.

§ 519.9 Information to be published.

In deciding which information to publish, consideration must be given to the fundamental objective of informing all interested persons of how to deal effectively with the Department of the Army. Subject to the exceptions provided in § 519.12, information to be currently published will include:

(a) Descriptions of the Army's central and field organization and the established places at which, the officers from whom, and the methods whereby, the public can obtain information, make submittals or requests, or obtain decisions.

(b) The procedures by which the Army conducts its business with the public, both formally and informally.

(c) Rules of procedures, descriptions of forms available or the places at which forms can be obtained, and the instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of applicability to the public adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Army.

(e) Documents that confer a right or privilege on a segment of the public or have a direct or substantial impact on the public or any significant portion of the public.

(f) Documents that prescribe a course of conduct that must be followed by persons outside the government to avoid a penalty, or secure a right or privilege.

(g) Documents that impose an obligation on the general public or members of a class persons outside the U.S. Government.

(h) Rules (significant) that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

(i) Open, partially-closed, and closed meetings that require members to take action on behalf of the Army where such deliberations determine or result in the joint conduct or disposition of Army business. Meetings will be published a minimum of 15 calendar days prior to date of meeting or as prescribed by the appropriate statute. Sunshine Act meetings are published in compliance with 5 U.S.C. 552b(e)(3); attendance at these meetings may be restricted for reasons of national security or for reasons indicated in 5 U.S.C. 552b(c). Notice of Sunshine Act meetings must be published at least one week prior to the date of the meeting (5 U.S.C. 552b(e)).

(j) Notices of establishment or renewal of advisory committees in accordance with their directives, statutory and/or nonstatutory authority.

(k) Public information collection requirements in compliance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*)

(l) Descriptions of particular programs, policy, or procedures in detail such as—

(1) Decisions and ruling;
(2) Grant application deadlines;
(3) Availability of Environmental Impact Statements;
(4) Delegations of authority;
(5) Issuance or revocation of licenses; and
(6) Hearings and investigations.

(m) Each amendment, revision, or repeal of the foregoing.

§ 519.10 Requirements pertaining to the information to be published.

The following procedures will be completed before submitting rules/regulations for publication—

(a) An economic analysis (EA) of the proposed or existing regulation. The EA should assess the effects of the regulation on the State, local, and tribal governments, and the private sector. An EA threshold of an annual effect on the economy of $100 million or more has been established for all regulations (Executive Order 12866.)

(b) Regulations containing collection of information requirements will be forwarded through the DCS, G–1 (DAPE–ZXI–RM) to OMB prior to publication as a proposed rule in the **Federal Register**. In addition, the proponent will address any collection of information comments filed by the Director, OMB, or the public in the final rule.

(c) Statutory and nonstatutory authorities mandate regulatory review of all Department of the Army proposed, interim, final, and withdrawn rules/regulations. The results are published in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. Under the requirements of regulatory review, the proponent will notify RMDA (AHRC–PDD–RP) when—

(1) Drafting a regulation that would affect the public.

(2) Reviewing regulations for revision or rescission.

(3) Rescinding a regulation.

§ 519.11 Incorporation by reference.

(a) Incorporation by reference allows the proponent to comply with the requirements to publish regulations in the **Federal Register** by referencing materials published elsewhere (*e.g.*, materials that may be purchased from the Government Printing Office (GPO) or depository libraries or are available for review at Army installations). Incorporated material has the same force and legal effect as any other properly issued regulation. Before a document can be incorporated by reference, the proponent must determine that it is available to the public (*see* 5 U.S.C. 552(a) and 1 CFR Part 51).

(b) Material is eligible for incorporation by reference if it—

(1) Is published data, criteria, standards, specifications, techniques, illustrations or similar materials.

(2) Is reasonably available to and usable by the class of persons affected by the publication.

(3) Does not reduce the usefulness of the **Federal Register** publication system.

(4) Benefits the Federal Government and members of affected classes.

(5) Substantially reduces the volume of material published in the **Federal Register**.

(c) Incorporation by reference is not acceptable as a complete substitute for promulgating in full the material required to be published. It can, however, be utilized to avoid unnecessary repetition of published information already reasonably available to the class of persons affected. Examples include:

(1) Construction standards issued by a professional association of architects, engineers, or builders;

(2) Codes of ethics issued by professional organizations; and,

(3) Forms and formats publicly or privately published and readily available to the person required to use them.

(d) Proposals for incorporation by reference will be submitted to RMDA (AHRC–PDD–RP) (by letter) giving an identification and subject description of the document statement of availability, indicating the document will be reasonably available to the class of persons affected, where and how copies may be purchased or examined, and justification for the requirement to incorporate by reference. The request will be submitted to RMDA (AHRC–PDD–RP) at least 25 working days before the proposed date for submission of the incorporation by reference notice for the **Federal Register**. The 25-working day period begins when RMDA receives the request.

(e) RMDA will consult with the Director, OFR concerning each specific request and will notify the proponent of the outcome of the consultation.

(f) The proponent will submit to RMDA (AHRC–PDD–RP) a general notice upon approval from the Director, OFR to the proposal for incorporation by reference.

(g) Requirements for updating material incorporated by reference:

(1) An amendment to the CFR must be published in the **Federal Register**.

(2) The proponent must provide RMDA (AHRC–PDD–RP) a copy of the incorporated material, as amended or revised, to submit to the OFR.

(3) RMDA will notify the Director, OFR of the changes.

(h) The proponent will notify RMDA (AHRC–PDD–RP) within 10 working days if the rule does not go into effect or when the rule containing the incorporation by reference is removed.

§ 519.12 Exceptions.

(a) The Army shall not publish rules in the **Federal Register** that:

(1) Involve any matter pertaining to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy.

(2) Involve any matter relating to Department of the Army Management, personnel, or public contracts, including nonappropriated fund contracts.

(3) Constitute interpretive rules, general statements of policy or rules of organization, procedure or practice.

(4) Merely interpret a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) A rule issued at the installation level that affects only the people near a particular post does not ordinarily apply to the general public, so the Army does not usually publish it in the **Federal Register**.

(c) It is not necessary to publish in the **Federal Register** any information which comes within one or more of the exemptions to the FOIA, 5 U.S.C. 552(b), as implemented by AR 25–55, para. 3–200.

§ 519.13 Procedures.

All matters to be published in accordance with this part will be submitted to the RMDA (AHRC–PDD–RP) in the proper format prescribed in § 519.17. As provided in § 519.3(e), Army Civil Works proponents who are proposing rules for publication in Titles 33 and 36 of the CFR may submit the required documents directly to the OFR but must otherwise comply with the provisions of this part.

§ 519.14 Effect of not publishing.

Except to the extent that a person has actual and timely notice thereof, the Army cannot require the general public to comply with, or be adversely affected by, a policy or requirement, as determined in § 519.9, until it is published in the **Federal Register**.

Subpart C—Inviting Public Comment on Certain Proposed Rules and Submission of Petitions

§ 519.15 General.

Public comment must be sought on certain proposed rules which are required to be published in accordance with § 519.9. All regulations affecting the public will be forwarded to RMDA (AHRC–PDD–RP) for review and coordination with OMB. This subpart sets forth the criteria and procedures for inviting public comment before publication.

§ 519.16 Applicability.

(a) These provisions apply only to those Department of the Army rules or portions thereof that:

(1) Are promulgated after September 7, 2004;

(2) Must be published in the **Federal Register** in accordance with § 519.9;

(3) Have a substantial and direct impact on the public or any significant portion of the public; and

(4) Do not merely implement a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) Unless otherwise required by law, the requirement to invite advance

public comment on proposed rules does not apply to those rules or portions thereof that:

(1) Do not come within the purview of paragraph (a) of this section;

(2) Involve any matter relating to a military or foreign affairs function of the United States that has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy;

(3) Involve any matter relating to Department of the Army management, personnel, or public contracts, *e.g.*, Armed Services Procurement Regulation, including nonappropriated fund contracts;

(4) Constitute interpretative rules, general statements of policy or rules of organization, procedure or practice; or

(5) The proponent of the rule determines for good cause that inviting public comment would be impracticable, unnecessary, or contrary to the public interest. This provision will not be utilized as a convenience to avoid the delays inherent in obtaining and evaluating prior public comment. See also § 519.22.

§ 519.17 Procedures when proposing rules.

(a) A description of the proposed rule will be forwarded to RMDA (AHRC–PDD–RP) for regulatory and OMB review. The RMDA will provide a Regulation Identifier Number (RIN) used to identify and report the rule in the Unified Agenda to the proponent once OMB has approved the rule for publication in the Proposed Rules section of the **Federal Register**. Proposed rules that have unresolved issues will not be published in the **Federal Register**.

(b) The preamble and the proposed rule will be prepared by the proponent. Preparation of the preamble and the proposed rule will be in accordance with guidance contained in the **Federal Register** Handbook on Document Drafting.

(c) Public comment will be invited within a designated time, not less than 60 days, prior to the intended adoption of the proposed rule.

(d) Rulemaking proponents will submit the original and three copies of the proposed rule and the preamble in the prescribed format to RMDA (AHRC–PDD–RP). The RMDA will ensure that the approved rules comply with executive and legislative requirements, and have the necessary coordination with OMB prior to publication. Upon OMB approval, the RMDA will certify and submit the documents to the Office of the Federal Register for publication as a proposed, interim, or final rule, as applicable.

(e) If no action has occurred within 1 year of publication, the proposed rule will be considered for withdrawal, unless the proponent provides justification to RMDA (AHRC–PDD–RP). If the proponent determines that the proposed rule must be withdrawn, the proponent will submit a document to RMDA (AHRC–PDD–RP) to be published in the **Federal Register** withdrawing the proposed rule. The withdrawal of the proposed rule will be reported in the next edition of the Unified Agenda.

(f) Civil Works projects under the ASA (CW) will submit updated and proposed Unified Agenda items to AASA.

§ 519.18 OMB Control Number.

Each rule OMB reviews under the Paperwork Reduction Act is assigned an OMB control number which becomes its identifier throughout its life.

§ 519.19 Consideration of public comment.

(a) Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate (60 days) in the rulemaking through the submission of written data, views and arguments to the proponent of the proposed rulemaking concerned.

(b) If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation of view may be allowed as a means of facilitating public comment. Informal consultation by telephone or otherwise can also be utilized to facilitate presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule in a manner prescribed by him/her. A hearing file will be established for each hearing. The hearing file will include:

(1) Public notices issued;

(2) Request for the hearing;

(3) Data or material submitted in justification thereof;

(4) Materials submitted in opposition to the proposed action;

(5) Hearing transcript; and

(6) Any other material as may be relevant or pertinent to the subject matter of the hearing.

(c) There is no requirement to respond either orally or in writing, individually to any person who submits comments with respect to a proposed rule. The proponent of the rule, however, can do so as a matter within his/her discretion.

§ 519.20 Procedures when publishing adopted rules.

(a) After careful consideration of all relevant material submitted, the proponent of the rule will make such revisions in the proposed rule as necessary in light of the comments received.

(b) If it is impractical for the rule proponent to finalize the rule after the comment period, due to extensive unresolved issues, the proponent will publish a document withdrawing the proposed rule.

(c) The proponent will prepare a preamble for publication with the final rule. The proponent will discuss in the preamble the comments received in response to the proposed rule and the decision to accept or reject the comments in the revision to the proposed rule. Preparation will be in accordance with guidance contained in the **Federal Register** Handbook on Document Drafting.

(d) The original and three copies of the preamble and revised rule will be forwarded to RMDA (AHRC–PDD–RP) in the proper format. The RMDA will then prepare the required certification and submit the documents to the Office of the Federal Register for publication in the form of an adopted rule.

(e) The proponent will provide to RMDA (AHRC–PDD–RP), a copy of the final rule, a completed OMB Form "Submission of Federal Rules Under the Congressional Review Act" (available at *http://www.whitehouse.gov/WH/EOP/OMB* and *http://www.gao.gov*), and a concise statement about the rule within 14 days of publication date in the **Federal Register**. The proponent will identify whether it is a major or a substantive/nonsignificant rule, its proposed effective date, significant issues of interest, and a cost-benefit analysis of the rule, as applicable. The RMDA will submit a copy of all final rules to both Houses of Congress and the Government Accounting Office (GAO) per CRA.

(f) Army Civil Works rulemaking proponents, when proposing rules governed by § 519.3(e) of this regulation, may forward the documents prescribed in paragraphs (d) and (e) of this section directly to the OFR. Army Civil Works proponents are responsible for submitting a copy of the final rules to Congress and GAO in accordance with paragraph (e) of this section.

§ 519.21 Submission of petitions.

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or repeal of any rule to which this part applies or would

apply if issued, as specified in § 519.16. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriate official may, at his discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition, together with the reasons supporting that disposition. This provision does not apply to comments submitted on proposed rules in § 519.19.

§ 519.22 Cases in which public comment is impractical.

(a) Whenever a rulemaking proponent determines for good cause that inviting public comment regarding a proposed rule would be impractical, unnecessary, or contrary to the public interest, he will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble to the adopted rule. The preamble and adopted rule will then be published as outlined in § 519.20(c) and (d).

(b) Alternatively, the proponent may request RMDA (AHRC–PDD–RP) (by letter) to adopt and publish in the **Federal Register** a separate rule exempting from the prepublication notice provisions of this regulation those specific categories of rules that the rulemaking proponent has determined that public comment would be unnecessary, impractical, or contrary to the public interest. The request to RMDA will contain an explanation of the reasons why the proponent believes that a particular category of rule or rules should not be published in proposed form for public comment and a legal review by the proponent's servicing legal office. If RMDA in coordination with the Office of Army General Counsel, agrees that public comment should not be invited with respect to the cited category, the proponent will adopt and publish a separate rule in the **Federal Register** exempting such rule or rules from the requirements of this part. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this part.

[FR Doc. 04–17998 Filed 8–5–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–028]

RIN 1625–AA09

Drawbridge Operation Regulation: Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the CSX Transportation (CSX) Railroad Bridge across Anacostia River, at mile 3.4, in Washington, DC. The final rule will eliminate the need for a bridge tender by allowing the bridge to be operated from a remote location. The final rule will maintain the bridge's current level of operational capabilities and continue to provide for the reasonable needs of rail transportation and vessel navigation.

DATES: This rule is effective September 7, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–028 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 17, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations: Anacostia River, Washington, DC" in the **Federal Register** (69 FR 27872). We received no comments on the proposed rule. No public hearing was requested nor held.

Background and Purpose

CSX, who owns and operates this movable (vertical lift-type) bridge, requested changes to the operating procedures for the drawbridge. The bridge has a vertical clearance in the closed position to vessels of eight feet at mean low water and five feet at mean high water. Currently, 33 CFR 117.253(b) requires the bridge to open on signal: at all times for public vessels of the United States, state and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property; between 9 a.m. and 12 noon and between 1 p.m. and 6 p.m. from May 15 through September 30; between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the bridge tender not later than 6 p.m. on the day for which the opening is requested; and at all other times, if at least eight hours notice is given.

CSX proposes to remotely operate the opening and closing of the CSX Railroad Bridge across Anacostia River in Washington, DC, from the Benning Yard office, one mile away.

In the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications, the CSX Railroad Bridge would not be operated from the remote location. In these situations, a bridge tender must be called and on-site within 30 minutes to operate the bridge.

When rail traffic has cleared, a horn will sound one prolonged blast followed by one short blast to indicate that the CSX Railroad Bridge is moving to the full open position to vessels. During open span movement, the channel traffic lights will flash red, until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green. Except as provided in 33 CFR 117.31(b), the opening of the draw to vessels will not exceed ten minutes after rail traffic has cleared the bridge.

During closing span movement, the channel traffic lights will flash red, the horn will sound five short blasts, and an audio voice-warning device will announce bridge movement. Five short blasts of the horn will continue until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red.

This change will save operational costs by eliminating bridge tenders, maintain the bridge's current level of operating capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

Discussion of Comments and Changes

The Coast Guard received no comments on the NPRM for the CSX Railroad Bridge and no changes are being made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We reached this conclusion based on the fact that this final rule will have minimal impact on maritime traffic transiting the bridge. Although the CSX Railroad Bridge will be operated from a remote location, mariners can continue to their transits because all aspects of the current operating regulations remain essentially the same.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will provide for the CSX Railroad Bridge to operate remotely and mariners will continue to plan their transits in accordance with the existing bridge operating regulations.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or option for compliance.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Amend § 117.253 by revising paragraph (b) to read as follows:

§ 117.253 Anacostia River.

* * * * *

(b) The CSX Railroad Bridge, mile 3.4.

(1) The draw of the bridge to be operated by the controller at the Benning Yard office shall open on signal:

(i) At all times for public vessels of the United States, state and local government vessels, commercial vessels and any vessels in an emergency involving danger to life or property.

(ii) Between 9 a.m. and 12 p.m. and between 1 p.m. and 6 p.m. from May 15 through September 30.

(iii) Between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the controller at the Benning Yard office not later than 6 p.m. on the day for which the opening is requested.

(iv) At all other times, if at least eight hours notice is given to the controller at the Benning Yard office.

(2) The CSX Railroad Bridge shall not be operated by the controller at the Benning Yard office in the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications, In these situations, a bridge tender must be called to operate the bridge on-site.

(3) Except as provided in § 117.31(b), opening of the draw shall not exceed ten minutes after clearance of rail traffic.

(4) A horn will sound one prolonged blast followed by one short blast to indicate that the CSX Railroad Bridge is moving to the full open position for vessel traffic. During open span movement, the channel traffic lights will flash red until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green.

(5) A horn will sound five short blasts, the channel traffic lights will flash red, and an audio voice-warning device will announce bridge movement during closing span movement. Five short blasts of the horn will continue until the bridge is seated in and locked down. When the bridge is seated and in locked down position to vessels, the channel traffic lights will continue to flash red.

(6) The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gauges shall be placed on the bridge so that they are plainly visible to the operator of any vessel approaching the bridge from either upstream or downstream.

Dated: July 26, 2004.

Sally Brice O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–18017 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC101–2029; FRL–7791–9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by the District of Columbia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: This action is effective August 6, 2004.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. In this action, EPA is doing the following:

1. Announcing the first update to the material being IBR'ed.

2. Adding a § 52.470(e) which summarizes the non-regulatory actions that EPA has taken on the District of Columbia SIP.

3. Making corrections to the chart listed in § 52.470(c), as described below:

a. District of Columbia Municipal Regulations (DCMR), Title 20—Environment. This title is added to the chart.

b. Chapter 1 (General), second entry for Section 199 (Definitions and Abbreviations)—In the "EPA Approval Date" column, the date format is revised from "May 9, 2001" to "5/9/01".

c. Chapter 2 (General and Non-attainment Area Permits), Section 204—The entry in the "Title/subject" column is revised.

d. Chapter 2, Section 8–2:720—The entry in the "State Citation" column is revised to read "Section 8–2:720(c)"; the entry in the "Comments" column is revised.

e. Chapter 4 (Ambient Monitoring, Emergency Procedures, Chemical Accident Prevention and Conformity), Section 400—The entry in the "Title/subject" column is revised.

f. Chapter 5 (Source Monitoring and Testing), Section 500—The entries in the "Title/subject" column are revised to read "Records and Reports".

g. Chapter 5, Section 502.18—In the "EPA Approval Date" column, the date format is revised from "May 9, 2001" to "5/9/01"; the text in the "Additional Information" column is removed.

h. Chapter 7 (Volatile Organic Compounds), all entries except for Section 710—In the "EPA Approval Date" column, the **Federal Register** page citation is revised to read "64 FR 57777".

i. Chapter 7, Section 701.1 through 701.3—In the "State citation" column, "701.3" is revised to read "703.13".

j. Chapter 7, Sections 708 and 713—The entries in the "Title/subject" column are revised.

k. Chapter 8 (Asbestos, Sulfur, and Nitrogen Oxides), Section 805—In the "EPA Approval Date" column, the **Federal Register** page citation (65 FR 81369) is added and the word "Type:" is removed.

l. Chapter 9 (Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants), Section 904 (Oxygenated Fuels)—In the "EPA Approval Date" column, the date format is revised from "May 9, 2001" to "5/9/01" and the **Federal Register** page citation (66 FR 23614) is added.

m. Chapter 9—A companion entry to Section 915 ("Section 999—Definitions"), inadvertently omitted at the time that EPA approved the District's national low emissions vehicle (NLEV) program, is inserted into the paragraph (c) chart.

n. Chapter 10 (Nitrogen Oxides Emissions Budget Program)—In the "EPA Approval Date" column, the **Federal Register** publication date and page citation for EPA's approval action (12/22/00, 65 FR 80783) is added to the entries for Section 1001 through 1013 and Section 199. Also, the **Federal Register** page citation for EPA's approval action (66 FR 55099) is added to the entry for Section 1014 (NO_x Budget Trading Program for State Implementation Plans).

o. Appendices—Appendix 3—The entry in the "Title/subject" column is revised.

p. Appendices—Appendix 5 (Test Methods for Sources of Volatile Organic Compounds)—In the "EPA Approval Date" column, the **Federal Register** page citation is revised to read "64 FR 57777".

q. Title 18 (Vehicles and Traffic)—This title is revised to read "District of Columbia Municipal Regulations (DCMR), Title 18—Vehicles and Traffic".

r. Title 18, all entries except for Chapter 6, Section 604 and Chapter 7, Section 753—In the "EPA Approval Date" column, the date format is revised from "June 11, 1999" to "6/11/99", and the **Federal Register** page citation (64 FR 31498) is added.

s. Title 18, Chapter 99—In the "Comments" column, an entry is added.

4. Amending § 52.470(d), for the entry "General Services Administration Central Heating and Refrigeration Plant and West Heating Plant", in the "EPA Approval Date" column, by revising the **Federal Register** publication date format from "Sept 30, 1999" to "9/30/99", and adding the **Federal Register** page citation (64 FR 52654).

5. In the tables found in § 52.470(c) and (d), renaming the column heading entitled "Additional Information" to "Additional Explanation".

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest". Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these "Identification of plan" reorganization update actions for the District of Columbia.

List of Subjects in 40 CFR Part 52

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

Dated: July 15, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. Section 52.470 is amended by revising paragraphs (b), (c) and (d), and adding paragraph (e).

The paragraphs are revised to read as follows:

§ 52.470 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after June 1, 2004 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of June 1, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 1301 Constitution Avenue NW., Room B108, Washington, DC. 20460; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-approved regulations.*

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment *Chapter 1 General*				
Section 100	Purpose, Scope and Construction ..	3/15/85	8/28/95 60 FR 44431	
Section 101	Inspection	3/15/85	8/28/95 60 FR 44431	
Section 102	Orders for Compliance	3/15/85	8/28/95 60 FR 44431	
Section 104	Hearings	3/15/85	8/28/95 60 FR 44431	
Section 105	Penalty	3/15/85	8/28/95 60 FR 44431	
Section 106	Confidentiality of Reports	3/15/85	8/28/95 60 FR 44431	
Section 107	Control Devices or Practices	3/15/85	8/28/95 60 FR 44431	
Section 199	Definitions and Abbreviations	4/29/97	7/31/97 62 FR 40937	
Section 199	Definitions and Abbreviations	4/29/97	12/7/99 62 FR 68293	Definitions of the terms: Actual emissions, allowable emissions, begin actual construction, commence, complete, major modification, necessary preconstruction approvals or permits, net emissions increase, new source, potential to emit, shutdown, and significant.
Section 199	Definitions and Abbreviations	12/8/00	5/9/01 66 FR 23614	Definition of "carrier".
Section 8–2: 702	Definitions; definition of "stack"	7/7/72	9/22/72 7 FR 19806	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 8–2: 724	Variances	7/7/72	9/22/72 37 FR 19806	
Chapter 2 General and Non-attainment Area Permits				
Section 200	General Permit Requirements	4/29/97	7/31/97 62 FR 40937	
Section 201	General Requirements for Permit Issuance.	4/29/97	7/31/97 62 FR 40937	
Section 202	Modification, Revocation and Termination of Permits.	4/29/97	7/31/97 62 FR 40937	
Section 204	Permit Requirements for Sources Affecting Nonattainment Areas.	4/29/97	7/31/97 62 FR 40937	
Section 206	Notice and Comment Prior to Permit Issuance.	4/29/97	7/31/97 62 FR 40937	
Section 299	Definitions and Abbreviations	4/29/97	7/31/97 62 FR 40937	
Section 8–2:720(c)	Permits to Construct or Modify; Permits to Operate.	7/7/72	9/22/72 37 FR 19806	Requirement for operating permit.
Chapter 4 Ambient Monitoring, Emergency Procedures, Chemical Accident Prevention and Conformity				
Section 400	Air Pollution Reporting Index	3/15/85	8/28/95 602 FR 44431	
Section 401	Emergency Procedures	3/15/85	8/28/95 60 FR 44431	
Section 403	Determining Conformity of Federal Actions to State or Federal Implementation Plans.	11/6/98	6/5/03 68 FR 33683	
Section 499	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431	
Chapter 5 Source Monitoring and Testing				
Sections 500.1 through 500.3	Records and Reports	3/15/97	8/28/95 60 FR 44431	
Sections 500.4, 500.5	Records and Reports	9/30/93	1/26/95 60 FR 5134	
Section 500.6	Records and Reports	9/30/93	10/27/99 64 FR 57777	
Section 500.7	Records and Reports—Emission Statements.	9/30/93	5/26/95 60 FR 27944	
Section 501	Monitoring Devices	3/15/85	8/28/95 60 FR 44431	
Sections 502.1 through 502.15	Sampling, Tests and Measurements.	3/15/85	8/28/95 60 FR 44431	Exceptions: Paragraphs 5.11, 5.12 and 5.14 are not part of the SIP.
Section 502.17	Sampling, Tests and Measurements.	09/30/93	10/27/99 64 FR 57777	
Section 502.18	Sampling, Tests and Measurements.	12/8/00	5/9/01 66 FR 23614	
Section 599	Definitions and Abbreviations	9/30/93	10/27/99 64 FR 57777	
Chapter 6 Particulates				
Section 600	Fuel-Burning Particulate Emissions	3/15/85	8/28/95 60 FR 44431	
Section 601	Rotary Cup Burners	3/15/85	8/28/95 60 FR 44431	
Section 602	Incinerators	3/15/85	8/28/95 60 FR 44431	
Section 603	Particulate Process Emissions	3/15/85	8/28/95 60 FR 44431	
Section 604	Open Burning	3/15/85	8/28/95 60 FR 44431	
Section 605	Control of Fugitive Dust	3/15/85	8/28/95 60 FR 44431	
Section 606	Visible Emissions	3/15/85	8/28/95 60 FR 44431	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 699	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431	
Chapter 7 Volatile Organic Compounds				
Section 700	Organic Solvents	3/15/85	10/27/99 64 FR 57777	
Section 701.1 through 701.13	Storage of Petroleum Products	3/15/85	10/27/99 64 FR 57777	
Section 702	Control of VOC leaks from Petroleum Refinery Equipment.	3/15/85	10/27/99 64 FR 57777	
Section 703.2, 703.3	Terminal Vapor Recovery—Gasoline or VOCs.	3/15/85	10/27/99 64 FR 57777	
Section 703.1, 703.4 through 703.7	Terminal Vapor Recovery—Gasoline or VOCs.	9/30/93	10/27/99 64 FR 57777	
Section 704	Stage I—Vapor Recovery	3/15/85	10/27/99 64 FR 57777	
Section 705.1 through 705.3	Stage II—Gasoline Vapor Recovery	9/30/93	10/27/99 64 FR 57777	
Section 705.4 through 705.14	Stage II—Gasoline Vapor Recovery	3/15/85	10/27/99 64 FR 57777	
Section 706	Petroleum Dry Cleaners	3/15/85	10/27/99 64 FR 57777	
Section 707	Perchloroethylene Dry Cleaning	3/15/85	10/27/99 64 FR 57777	
Section 708	Solvent Cleaning (Degreasing)	3/15/85	10/27/99 64 FR 57777	
Section 709	Asphalt Operations	3/15/85	10/27/99 64 FR 57777	
Section 710	Engraving and Plate Printing	3/15/85	8/4/92 57 FR 34249	
Section 711	Pumps and Compressors	3/15/85	10/27/99 64 FR 57777	
Section 712	Waste Gas Disposal from Ethylene Producing Plant.	3/15/85	10/27/99 64 FR 57777	
Section 713	Waste Gas Disposal from Vapor Blow-down Systems.	3/15/85	10/27/99 64 FR 57777	
Section 715	Reasonably Available Control Technology.	09/30/93	10/27/99 64 FR 57777	
Section 716	Offset Lithography	10/2/98	10/27/99 64 FR 57777	
Section 799	Definitions and Abbreviations	09/30/93	10/27/99 64 FR 57777	
Chapter 8 Asbestos, Sulfur and Nitrogen Oxides				
Section 801	Sulfur Content of Fuel Oils	3/15/85	8/28/95 60 FR 44431	
Section 802	Sulfur Content of Coal	3/15/85	8/28/95 60 FR 44431	
Section 803	Sulfur Process Emissions	3/15/85	8/28/95 60 FR 44431	
Section 804	Nitrogen Oxide Emissions	3/15/85	8/28/95 60 FR 44431	
Section 805	Reasonably Available Control Technology for Major Stationary Sources of Oxides of Nitrogen.	11/19/93 and 12/8/00	12/26/00 65 FR 81369	
Section 899	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431	
Chapter 9 Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants				
Section 904	Oxygenated Fuels	7/25/97	5/9/01 66 FR 23614	Addition of subsection 904.3 to make the oxygenated gasoline program a CO contingency measure.
Section 915	National Low Emissions Vehicle Program.	2/11/00	7/20/00 65 FR 44981	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 999	Definitions and Abbreviations	2/11/00	7/20/00 65 FR 44981	
Chapter 10 Nitrogen Oxides Emissions Budget Program				
Section 1000	Applicability	12/8/00	12/22/00 65 FR 80783	
Section 1001	General Provisions	12/8/00	12/22/00 65 FR 80783	
Section 1002	Allowance Allocation	12/8/00	12/22/00 65 FR 80783	
Section 1003	Permits	12/8/00	12/22/00 65 FR 80783	
Section 1004	Allowance Transfer and Use	12/8/00	12/22/00 65 FR 80783	
Section 1005	Allowance Banking	12/8/00	12/22/00 65 FR 80783	
Section 1006	NO_X Allowance Tracking system	12/8/00	12/22/00 65 FR 80783	
Section 1007	Emission Monitoring	12/8/00	12/22/00 65 FR 80783	
Section 1008	Record Keeping	12/8/00	12/22/00 65 FR 80783	
Section 1009	Reporting	12/8/00	12/22/00 65 FR 80783	
Section 1010	End-of-Season Reconciliation	12/8/00	12/22/00 65 FR 80783	
Section 1011	Compliance Certification	12/8/00	12/22/00 65 FR 80783	
Section 1012	Penalties	12/8/00	12/22/00 65 FR 80783	
Section 1013	Program Audit	12/8/00	12/22/00 65 FR 80783	
Section 1014	NO_X Budget Trading Program for State Implementation Plans.	5/1/01	11/1/01 66 FR 55099	
Section 1099	Definitions and Abbreviations	12/8/00	12/22/00 65 FR 80783	
Appendices				
Appendix 1	Emission Limits for Nitrogen Oxide	3/15/85	8/28/95 60 FR 44431	
Appendix 2	Table of Allowable Particulate Emissions from Process Sources.	3/15/85	8/28/95 60 FR 44431	
Appendix 3	Graphic Arts Sources	3/15/85	8/28/95 60 FR 44431	
Appendix 5	Test Methods for Sources of Volatile Organic Compounds.	9/30/93	10/27/99 64 FR 57777	
District of Columbia Municipal Regulations (DCMR), Title 18—Vehicles and Traffic				
Chapter 4 Motor Vehicle Title and Registration				
Section 411	Registration of Motor Vehicles: General Provisions.	10/10/86	6/11/99 64 FR 31498	
Section 412	Refusal of Registration	10/17/97	6/11/99 64 FR 31498	
Section 413	Application for Registration	9/16/83	6/11/99 64 FR 31498	
Section 429	Enforcement of Registration and Reciprocity Requirements.	3/4/83	6/11/99 64 FR 31498	
Chapter 6 Inspection of Motor Vehicles				
Section 600	General Provisions	4/23/82	6/11/99 64 FR 31498	
Section 602	Inspection Stickers	3/15/85	6/11/99 64 FR 31498	
Section 603	Vehicle Inspection: Approved Vehicles.	6/29/74; Recodified 4/1/81	6/11/99 64 FR 31498	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 604	Vehicle Inspection: Rejected Vehicles.	11/23/84	4/10/86 51 FR 12322	
Section 606	Vehicle Inspection: Condemned Vehicles.	6/29/74; Recodified 4/1/81	6/11/99 64 FR 31498	
Section 607	Placement of Inspection Stickers on Vehicles.	4/7/77; Recodified 4/1/81	6/11/99 64 FR 31498	
Section 608	Lost, Mutilated or Detached Inspection Stickers.	6/30/72; Recodified 4/1/81	6/11/99 64 FR 31498	
Section 609	Inspection of Non-Registered Motor Vehicles.	6/30/72 Recodified 4/1/81	6/11/99 64 FR 31498	
Section 617	Inspection Certification	7/22/94	6/11/99 64 FR 31498	
Section 618	Automotive Emissions Repair Technician.	7/22/94	6/11/99 64 FR 31498	
Section 619	Vehicle Emission Recall Compliance.	10/17/97	6/11/99 64 FR 31498	
	Chapter 7 Motor Vehicle Equipment			
Section 701	Historic Motor Vehicles	2/25/78; Recodified 4/1/81	6/11/99 64 FR 31498	
Section 750	Exhaust Emission Systems	4/26/77; Recodified 4/1/81	6/11/99 64 FR 31498	
Section 751	Compliance with Exhaust Emission Standards.	7/22/94	6/11/99 64 FR 31498	
Section 752	Maximum Allowable Levels of Exhaust Components.	10/17/97	6/11/99 64 FR 31498	
Section 753	Inspection of Exhaust Emission Systems.	5/23/83	4/10/86 51 FR 12322	
Section 754	Federal Transient Emissions Test: Testing Procedures.	7/22/94	6/11/99 64 FR 31498	
Section 755	Federal Transient Emissions Test: Equipment.	7/22/94	6/11/99 64 FR 31498	
Section 756	Federal Transient Emissions Test: Quality Assurance Procedures.	7/22/94	6/11/99 64 FR 31498	
	Chapter 11 Motor Vehicle Offenses and Penalties			
Section 1101	Offenses Related to Title, Registration, and Identification Tags.	6/30/72; Recodified 4/1/81	6/11/99 64 FR 31498	
Section 1103	Offenses Related to Inspection Stickers.	6/30/72; Recodified 4/1/81	6/11/99 64 FR 31498	
Section 1104	False Statements, Alterations, Forgery, and Dishonest Checks.	11/29/91	6/11/99 64 FR 31498	
Section 1110	Penalties for Violations	11/29/91	6/11/99 64 FR 31498	
	Chapter 26 Civil Fines for Moving and Non-Moving Violations			
Section 2600.1	Infraction: Inspection, Registration Certificate, Tags.	8/31/90	6/11/99 64 FR 31498	
	Chapter 99 Definitions			
Section 9901	Definitions	10/1/97	6/11/99 64 FR 31498	Definition of "Emission Recall Notice."

(d) *EPA-approved State source-specific requirements.*

EPA-APPROVED DISTRICT OF COLUMBIA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Additional explanation
General Services Administration Central Heating and Refrigeration Plant and West Heating Plant.	N/A—it is the operating permit issued to GSA by the District of Columbia on October 17, 1997.	10/17/97	9/30/99 64 FR 52654	The following portions of GSA's operating permit are not included in the SIP: The portion of Condition 3 referring to Table 1; Table 1; Condition 4; Table 3; and Condition 17.

(e) *EPA-approved non-regulatory and quasi-regulatory material.*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1990 Base Year Emissions Inventory.	Washington, DC carbon monoxide maintenance area.	1/13/94 10/12/95	1/30/96 61 FR 2931	52.474(a) CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington ozone nonattainment area.	1/13/94	4/23/97 62 FR 19676	52.474(b) VOC, NO_X, CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington ozone nonattainment area.	11/3/97	7/8/98 63 FR 36854	52.474(c) VOC, NO_X.
15% Rate of Progress Plan	Metropolitan Washington ozone nonattainment area.	4/16/98	08/05/1999 64 FR 42600	52.476(a).
Negative Declaration-VOC Source Categories.	Metropolitan Washington ozone nonattainment area.	4/8/93 and 9/4/97	10/27/99 64 FR 57777	52.478(a), 52.478(b).
Photochemical Assessment Monitoring Stations (PAMS) Program.	Metropolitan Washington ozone nonattainment area.	1/14/94	9/11/95 60 FR 47081	52.480.
Small Business stationary source technical and environmental compliance assistance program.	Statewide	10/22/93	8/17/94 59 FR 42165	52.510.
Establishment of air quality monitoring Network.	Statewide	5/16/79	8/31/81 46 FR 43676	Subpart I, section 52.465(c)(18).
Lead (Pb) SIP	Washington, DC	10/7/82	8/18/83 48 FR 37401	52.515(c)(22).
Plan for public notification of air quality.	Metropolitan Washington ozone nonattainment area.	12/5/83	6/1/84 49 FR 22810	52.515(c)(23).
Revision for conflict of interest procedures [CAA Section 128 SIP].	Metropolitan Washington ozone nonattainment area.	12/6/83	6/1/84 49 FR 22810	52.515(c)(24).
Carbon Monoxide Maintenance Plan.	Washington, DC	10/12/95	1/30/96 61 FR 2931	52.515(c)(36).

[FR Doc. 04–17780 Filed 8–5–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7636]

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arkansas: Pulaski (Case No.: 03–06–2056P).	City of Little Rock	Mar. 18, 2004, Mar. 25, 2004, *Arkansas Democrat-Gazette.*	The Honorable Jim Dailey, Mayor, City of Little Rock, 500 West Markham, Little Rock, AR 72201.	Jun. 24, 2004	050181
Arkansas: Benton (Case No.: 03–06–2052P).	City of Rogers	May 19, 2004, May 26, 2004, *The Rogers Hometown News.*	The Honorable Steve Womack, Mayor, City of Rogers, 300 W. Poplar Street, Rogers, AR 72756.	May 3, 2004	050013
Illinois: Kane (Case No.: 03–05–3991P).	City of Aurora	Mar. 3, 2004, Mar. 10, 2004, *The Beacon News.*	The Honorable David L. Stover, Mayor, City of Aurora, 44 East Downer Place, Aurora, IL 60507.	Feb. 3, 2004	170320
Illinois: St. Clair (Case No.: 04–05–2333P).	City of Belleville ..	May 5, 2004, May 12, 2004, *The Belleville Journal.*	The Honorable Mark A. Kern, Mayor, City of Belleville, 101 South Illinois Street, Belleville, IL 62220.	Aug. 12, 2004	170618
Illinois: Cook (Case No.: 03–05–1460P).	Village of Burr Ridge.	Apr. 7, 2004, Apr. 14, 2004, *The Suburban Life.*	Ms. Jo Irmen, President, Village of Burr Ridge, Village Hall, 7660 County Line Road, Burr Ridge, IL 60521.	Jul. 14, 2004	170071
Illinois: Will (Case No.: 04–05–0084P).	Village of Frankfort.	May 20, 2004, May 27, 2004, *The Herald News.*	The Honorable Ray Rossi, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	May 4, 2004	170701

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Illinois: Kane & DeKalb (Case No.: 03–05–3994P).	Unincorporated Areas.	Mar. 18, 2004, Mar. 25, 2004, *The Elburn Herald.*	Mr. Michael W. McCoy, Chairman, Kane County Board, Kane County Government Center, 719 South Batavia Avenue, Bldg. A, Geneva, IL 60134.	Jun. 24, 2004	170896
Illinois: Kane & DeKalb (Case No.: 03–05–3994P).	Village of Maple Park.	Mar. 18, 2004, Mar. 25, 2004, *The Elburn Herald.*	Mr. Mark T. Delany, Village President, Village of Maple Park, P.O. Box 220, Maple Park, IL 60151.	Jun. 24, 2004	171018
Illinois: Cook (Case No.: 03–05–3383P).	Village of Orland Park.	May 20, 2004, May 27, 2004, *Orland Township Messenger.*	The Honorable Daniel McLaughlin, Mayor, Village of Orland Park, Village Hall, 14700 South Ravinia Avenue, Orland Park, IL 60462.	Aug. 26, 2006	170140
Illinois: Will (Case No.: 04–05–0088P).	Village of Plainfield.	Apr. 7, 2004, Apr. 14, 2004, *The Enterprise.*	The Honorable Richard Rock, Mayor, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	Mar. 5, 2004	170771
Indiana: Hamilton (Case No.: 04–05–1640P).	City of Carmel	May 4, 2004, May 11, 2004, *The Noblesville Ledger.*	The Honorable James Brainard, Mayor, City of Carmel, One Civic Square, Carmel, IN 46032.	Aug. 10, 2004	180081
Indiana: Hamilton (Case No.: 03–05–5182P).	Town of fishers ...	Apr. 2, 2004, Apr. 9, 2004, *The Noblesville Ledger.*	Mr. Michael J. Booth, Manager, Town of Fishers, Fishers Town Hall, One Municipal Drive, Fishers, IN 46038.	Jul. 9, 2004	180423
Indianapolis: Marion (Case No.: 03–05–3997P).	City of Indianapolis.	May 21, 2004, May 28, 2004, *The Indianapolis Star.*	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, City-County Building, Indianapolis, IN 46204.	Aug. 27, 2004	180159
Iowa: Story (Case No.: 03–07–892P).	City of Ames	Apr. 8, 2004, Apr. 15, 2004, *The Tribune.*	The Honorable Ted Tedesco, Mayor, City of Ames, 515 Clark Avenue, Ames, IA 50010.	Jul. 15, 2004	190254
Indiana: Hendricks (Case No.: 03–05–3373P).	Unincorporated Areas.	May 17, 2004, May 24, 2004, *Hendricks County Flyer.*	Mr. Steven L. Ostermeier, President, Board of Commissiioners, Hendricks County Government Center, 355 South Washington, Suite 204, Danville, IN 46122.	Aug. 23, 2004	180415
Iowa: Polk (Case No.: 03–07–499P).	City of Ankeny	Apr. 20, 2004, Apr. 27, 2004, *Ankeny Press Citizen.*	The Honorable Merle O. Johnson, Mayor, City of Ankeny, City Hall, 410 West First Street, Ankeny, IA 50021.	Jul. 27, 2004	190226
Iowa: Scott (Case No.: 03–07–888P).	City of Davenport	Mar. 24, 2004, Mar. 31, 2004, *Quad City Times.*	The Honorable Charles W. Brooke, Mayor, City of Davenport, City Council Office, 226 West 4th Street, Davenport, IA 52801.	Jun. 30, 2004	190242
Iowa: Story (Case No.: 04–07–046P).	Unincorporated Areas.	Mar. 25, 2004, Apr. 1, 2004, *The Tribune.*	Ms. Jane Halliburton, Story County Board of Commissioners, 900 6th Street, Nevada, IA 50201.	Jul. 1, 2004	190907
Kansas: Johnson (Case No.: 04–07–026P).	City of Overland Park.	May 13, 2004, May 20, 2004, *The Sun Newspapers.*	The Honorable Ed Eilert, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Frive, Overland Park, KS 66212.	Apr. 21, 2004	200174
Kansas: Sedgwick (Case No.: 03–07–898P).	City of Wichita	Mar. 10, 2004, Mar. 17, 2004, *The Wichita Eagle.*	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202.	Feb. 12, 2004	200328
Kansas: Sedgwick (Case No.: 03–07–890P).	City of Wichita	Apr. 9, 2004, Apr. 16, 2004, *The Wichita Eagle.*	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202.	Apr. 26, 2004	200328
Kansas: Sedgwick (Case No.: 03–07–1283P).	City of Wichita	Apr. 22, 2004, Apr. 29, 2004, *The Wichita Eagle.*	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202.	Jul. 29, 2004	200328
Michigan: Wayne (Case No.: 03–05–3992P).	Township of Canton.	May 20, 2004, May 27, 2004, *Canton Eagle.*	Mr. Thomas Yack, Township Supervisor, Township of Canton, 1150 South Canton Center, Canton, MI 48188.	Aug. 26, 2004	260219

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Michigan: Macomb (Case No.: 04–05–0884P).	Charter Township of Clinton.	Mar. 23, 2004, Mar. 30, 2004, *The Macomb Daily.*	Mr. Robert J. Cannon, Township Supervisor, 40700 Romeo Plank Road, Clinton Township, MI 48038.	Feb. 19, 2004	260121
Michigan: Ingham (Case No.: 03–05–5186P).	Charter Township of Meridian.	May 23, 2004, May 30, 2004, *The Town Courier..*	Mr. Gerald Richards, Township Manager, Charter Township of Meridian, 5151 Marsh Road, Okemos, MI 48864–1198.	Aug. 29, 2004	260093
Minnesota: Washington (Case No.: 03–05–2576P).	City of Hugo	Mar. 31, 2004, Apr. 7, 2004, *The White Bear Press.*	The Honorable Fran Miron, Mayor, City of Hugo, 14669 Fitzgerald Avenue North, Hugo, MN 55038.	Mar. 19, 2004	270504
Minnesota: Olmsted (Case No.: 03–05–3988P).	Unincorporated Areas.	Mar. 23, 2004, Mar. 30, 2004, *The Post-Bulletin.*	Mr. Richard Devin, County Administrator, Olmsted County, 151 4th Street SE., Rochester, MN 55904.	Feb. 23, 2004	270626
Minnesota: Olmsted (Case No.: 03–05–3988P).	City of Rochester	Mar. 23, 2004, Mar. 30, 2004, *The Post-Bulletin.*	The Honorable Ardell Brede, Mayor, City of Rochester, City Hall, Room 281, 201 4th Street SE., Rochester, MN 55904.	Feb. 23, 2004	275246
Minnesota: Winona (Case No.: 04–05–0100P).	City of Winona	Mar. 24, 2004, Mar. 31, 2004, *Winona Daily News.*	The Honorable Jerry Miller, Mayor, City of Winona, 207 Lafayette Street, Winona, MN 55987.	Feb. 5, 2004	275250
Missouri: Greene (Case No.: 04–07–038P).	City of Republic ..	May 12, 2004, May 19, 2004, *The Republic Monitor.*	The Honorable Keith D. Miller, Mayor, City of Republic, 213 North Maine Street, Republic, MO 65738.	Apr. 19, 2004	290148
Nebraska: Sarpy (Case No.: 02–07–551P).	City of Bellevue ..	Mar. 24, 2004, Mar. 31, 2004, *The Bellevue Leader.*	The Honorable Jerry Ryan, Mayor, City of Bellevue, 2310 West Missouri Avenue, Bellevue, NE 68005.	Jul. 1, 2004	310191
Nebraska: Sarpy (Case No.: 02–07–551P).	City of La Vista ...	Mar. 25, 2004, Apr. 1, 2004, *The Papillion Times.*	The Honorable Harold Anderson, Mayor, City of La Vista, 8116 Park View Boulevard, La Vista, NE 68128.	Jul. 1, 2004	310192
Nebraska: Lancaster (Case No.: 04–07–030P).	City of Lincoln	May 28, 2004, June 4, 2004, *Lincoln Journal Star.*	The Honorable Coleen J. Seng, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, NE 68508.	May 5, 2004	315273
Nebraska: Sarpy (Case No.: 02–07–551P).	City of Papillion ...	Mar. 25, 2004, Apr. 1, 2004, *The Papillion Times.*	The Honorable James E. Blinn, Mayor, City of Papillion, 122 East Third Street, Papillion, NE 68046.	Jul. 1, 2004	315275
New Mexico: Bernalillo (Case No.: 03–06–1927P).	City of Albuquerque.	May 19, 2004, May 26, 2004, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	.....	.....
New Mexico: Bernalillo (Case No.: 03–06–832P).	City of Albuquerque.	June 11, 2004, June 18, 2004, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Sept. 17, 2004	350002
New Mexico: Bernalillo (Case No.: 04–06–039P).	City of Albuqerque.	Apr. 30, 2004, May 7, 2004, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Apr. 16, 2004	350002
New Mexico: Bernalillo (Case No.: 04–06–671P).	City of Albuquerque.	Apr. 15, 2004, Apr. 22, 2004, *Albuerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Mar. 23, 2004	350002
New Mexico: Bernalillo (Case No.: 03–06–1003P).	City of Albuquerque.	Mar. 25, 2004, Apr. 1, 2004, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Mar. 3, 2004	350002
New Mexico: Bernalillo (Case No.: 04–06–654P).	Unincorporated Areas.	May 6, 2004, May 23, 2004, *Albuqerque Journal.*	The Honorable Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza NW., Albuquerque, NM 87102.	Apr. 20, 2004	350001

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
New Mexico: Bernalillo (Case No.: 04–06–039P).	Unincorporated Areas.	Apr. 30, 2004, May 7, 2004, *Albuquerque Journal.*	The Honorable Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza NW., Albuquerque, NM 87102.	Apr. 16, 2004	350001
New Mexico: Bernalillo (Case No.: 04–06–659P).	Unincorporated Areas.	Mar. 22, 2004, Mar. 29, 2004, *Albuquerque Journal.*	The Honorable Tom Rutherford, Chairman, Bernalillo County, One Civil Plaza NW., Albuquerque, NM 87102.	Feb. 27, 2004	350001
New Mexico: Dona Ana (Case No.: 04–06–234P).	City of Las Cruces.	Mar. 23, 2004, Mar. 30, 2004, *Las Cruces Sun News.*	The Honorable William Mattiace, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004.	Feb. 18, 2004	355332
Ohio: Butler (Case No.: 03–05–3976P).	Unincorporated Areas.	May 19, 2004, May 26, 2004, *Middletown Journal.*	Mr. Michael A. Fox, President, County Commissioners, Butler County, Gov't. Services Center, 315 High Street, 6th Floor, Hamilton, OH 45011.	Aug. 25, 2004	390037
Ohio: Fairfield (Case No.: 03–05–5190P).	Unincorporated Areas.	Apr. 7, 2004, Apr. 14, 2004, *Lancaster Eagle-Gazette.*	Mr. Jon Myers, Fairfield County, Board of Commissioners, 210 East Main Street, Room 301, Lancaster, OH 43130.	Apr. 5, 2004	390158
Ohio: Butler & Warren (Case No.: 03–05–3976P).	Village of Monroe	May 19, 2004, May 26, 2004, *Middletown Journal.*	The Honorable Robert Routson, Mayor, Village of Monroe, 233 South Main Street, P.O. Box 330, Monroe, OH 45050–0330.	Aug. 25, 2004	390042
Ohio: Warren (Case No.: 03–05–5187P).	Village of Springboro.	May 13, 2004, May 20, 2004, *The Springboro Star Press.*	The Honorable John Agenbroad, Mayor, Village of Springboro, 320 West Central Avenue, Springboro, OH 45066.	Aug. 19, 2004	390564
Ohio: Warren (Case No.: 03–05–5187P).	Unincorporated Areas.	May 13, 2004, May 20, 2004, *The Springboro Star-Press.*	Mr. C. Michael Kilburn, President, Warrant County, Board of Commissioiners, 320 West Central Avenue, Springboro, OH 45066.	Aug. 19, 2004	390757
Oklahoma: Oklahoma (Case No.: 04–06–035P).	City of Midwest City.	Mar. 25, 2004, Apr. 1, 2004, *The Midwest City Sun.*	The Honorable Eddie Reed, Mayor, Midwest City, P.O. Box 10570, Midwest City, OK 73140.	Mar. 2, 2004	400405
Oklahoma: Oklahoma (Case No.: 04–06–131P).	City of Oklahoma City.	May 28, 2004, June 4, 2004, *The Daily Oklahoman.*	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	May 5, 2004	405378
Oklahoma: Tulsa (Case No.: 04–06–552P).	City of Tulsa	Mar. 18, 2004, Mar. 25; 2004, *Tulsa World.*	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Feb. 12, 2004	405381
Texas: Taylor and Jones (Case No.: 03–06–2669P).	City of Abilene	May 4, 2004, May 11, 2004, *Abilene Reporter-News.*	The Honorable Grady Barr, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604.	Aug. 10, 2004	485450
Texas: Parker (Case No.: 03–06–1950P).	City of Aledo	Mar. 3, 2004, Mar. 10, 2004, *The Weatherford Democrat.*	The Honorable Sue Langley, Mayor, City of Aledo, 200 Old Annetta Road, Aledo, TX 76008.	June 9, 2004	481659
Texas: Dallas (Case No.: 03–06–2532P).	City of Carrollton	Apr. 7, 2004, Apr. 14, 2004, *The Carrollton Leader.*	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	Mar. 23, 2004	480167
Texas: Williamson (Case No.: 04–06–651P).	City of Cedar Park.	May 19, 2004, May 26, 2004, *The Hill Country News.*	The Honorable Bob Young, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	Aug. 25, 2004	481282
Texas: Tarrant (Case No.: 04–06–383P).	City of Colleyville	Jan. 29, 2004, Feb. 5, 2004, *The Star Telegram.*	The Honorable Joe Hocutt, Mayor, City of Colleyville, 5400 Bransford Road, Colleyville, TX 76034.	May 6, 2004	480590
Texas: Comal (Case No.: 03–06–1394P).	Unincorporated Areas.	Apr. 28, 2004, May 5, 2004, *Comal County Beacon.*	The Honorable Danny Scheel, Judge, Comal County, 199 Main Plaza, New Braunfels, TX 78130.	Aug. 4, 2004	485463

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas: Denton (Case No.: 03–06–2331P).	Town of Flower Mound.	Mar. 3, 2004, Mar. 10, 2004, *Flower Mound Leader.*	The Honorable Lori DeLuca, Mayor, Town of Flower Mount, 2121 Cross Timbers Road, Flower Mound, TX 75028.	June 9, 2004	480777
Texas: Fort Bend (Case No.: 04–06–561P).	Fort Bend County M.U.D. No. 23.	May 19, 2004, May 26, 2004, *Fort Bend Star.*	Mr. Mark Massey, President, Board of Directors, Fort Bend County MUD No. 23, 301 Jackson Street, Richmond, TX 77469.	Apr. 30, 2004	481590
Texas: Tarrant (Case No.: 03–06–2551P).	City of Fort Worth	Mar. 3, 2004, Mar. 10, 2004, *The Star Telegram.*	The Honorable Michael Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Mar. 12, 2004	480596
Texas: Tarrant (Case No.: 04–06–230P).	City of Fort Worth	Apr. 13, 2004, Apr. 20, 2004, *The Star Telegram.*	The Honorable Michael Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Jul. 20, 2004	480596
Texas: Tarrant (Case No.: 03–06–2049P).	City of Fort Worth	Apr. 22, 2004, Apr. 29, 2004, *The Star Telegram.*	The Honorable Michael Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Jul. 30, 2004	480596
Texas: Dallas (Case No.: 03–06–2537P).	City of Garland ...	June 3, 2004, June 10, 2004, *Garland Morning News.*	The Honorable Bob Day, Mayor, City of Garland, 200 N. Fifth Street, Garland, TX 75040.	June 10, 2004	485471
Texas: Harris (Case No.: 04–06–132P).	Unincorporated Areas.	Mar. 3, 2004, Mar. 10, 2004, *The Houston Chronicle.*	The Honorable Robert A. Eckels, Judge, Harris County, 1001 Preston, Suite 911, Houston, TX 77002.	Feb. 9, 2004	480287
Texas: Hays (Case No.: 03–06–1940P).	Unincorporated Areas.	Apr. 7, 2004, Apr. 14, 2004, *San Marcos Daily Record.*	The Honorable Jim Powers, Judge, Hays County, 111 E. San Antonio Street, Suite 300, San Marcos, TX 78666.	Mar. 23, 2004	480321
Texas: Tarrant (Case No.: 04–06–657P).	City of Hurst	Apr. 7, 2004, Apr. 14, 2004, *The Star Telegram.*	The Honorable William D. Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Mar. 24, 2004	480601
Texas: Hays (Case No.: 03–06–1940P).	City of Kyle	Apr. 7, 2004, Apr. 14, 2004, *The Kyle Eagle.*	The Honorable James L. Adkins, Mayor, City of Kyle, 300 West Center, Kyle, TX 78640.	Mar. 23, 2004	481108
Texas: Dallas (Case No.: 03–06–1750P).	City of Mesquite ..	May 13, 2004, May 20, 2004, *The Mesquite News.*	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Apr. 29, 2004	485490
Texas: Dallas (Case No.: 03–06–2692P).	City of Mesquite ..	Mar. 4, 2004, Mar. 11, 2004, *The Mesquite News.*	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	June 10, 2004	485490
Texas: Parker (Case No.: 03–06–1950P).	Unincorporated Areas.	Mar. 3, 2004, Mar. 10, 2004, *The Weatherford Democrat.*	The Honorable Mark Riley, Judge, Parker County, 123 North Main Street, Weatherford, TX 76086.	June 9, 2004	480520
Texas: Tom Green (Case No.: 03–06–2684P).	City of San Angelo.	Jan. 16, 2004, Jan. 23, 2004, *San Angelo Standard Times.*	The Honorable J. W. Lown, Mayor, City of San Angelo, San Angelo City Hall, 72 West College Avenue, San Angelo, TX 76903.	Dec. 30, 2003	480623
Texas: Bexar (Case No.: 03–06–2544P).	City of San Antonio.	May 24, 2004, May 31, 2004, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	Aug. 30, 2004	480045
Texas: Bexar (Case No.: 03–06–2679P).	City of San Antonio.	May 24, 2004, May 31, 2004, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	Aug. 30, 2004	480045
Texas: Bexar (Case No.: 04–06–031P).	City of San Antonio.	Mar. 24, 2004, Mar. 31, 2004, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	June 30, 2004	480045
Texas: Dallas (Case No.: 04–06–566P).	Town of Sunnyvale.	Apr. 14, 2004, Apr. 21, 2004, *Dallas Morning News.*	The Honorable Jim Phaup, Mayor, Town of Sunnyvale, 537 Long Creek Road, Sunnyvale, TX 75182.	Mar. 30, 2004	480188

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas: Tarrant (Case No.: 03–06–2529P).	City of White Settlement.	June 3, 2004, June 10, 2004, *White Settlement Bomber News.*	The Honorable James O. Ouzts, Mayor, City of White Settlement, 214 Meadow Park Drive, White Settlement, TX 76108.	May 14, 2004	480617

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–17962 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arkansas: Pulaski ..... (Case No.: 03–06–1726P) (FEMA Docket No. P–7634).	City of Little Rock	January 28, 2004, February 4, 2004, Arkansas Democrat Gazette.	The Honorable Jim Dailey, Mayor, City of Little Rock, Little Rock City Hall, Room 203, 500 West Markham, Little Rock, AR 72201.	January 7, 2004	050181
Illinois: Kane and Cook ... (Case No.: 03–05–3985P). (FEMA Docket No. P–7634).	City of Elgin	January 14, 2004, January 21, 2004, The Daily Herald.	The Honorable Ed Schock, Mayor, City of Elgin, 150 Dexter Court, Elgin, IL 60120.	December 15, 2003 ..	170087
Illinois: Kane ..... (Case No.: 03–05–3985P). (FEMA Docket No. P–7634).	Unincorporated Areas.	January 14, 2004, January 21, 2004, The Daily Herald.	Mr. Michael W. McCoy, Chairman, Kane County, Kane County Government Center, 719 South Batavia Avenue, Bldg. A, Geneva, IL 60134.	December 15, 2003 ..	170896
Illinois: Will ..... (Case No.: 03–05–3973P). (FEMA Docket No. P–7634).	Village of Plainfield.	January 21, 2004, January 28, 2004, The Enterprise.	The Honorable Richard Rock, Mayor, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	January 5, 2004	170771
Illinois: Randolph ..... (Case No.: 03–05–4001P). (FEMA Docket No. P–7634).	Village of Prairie du Rocher.	February 5, 2004, February 12, 2004, North County News.	Mr. Larry Durbin, President, Village of Prairie du Rocher, P.O. Box 325, Prairie du Rocher, IL 62277.	May 13, 2004	170578
Illinois: Randolph ..... (Case No.: 03–05–4001P). (FEMA Docket No. P–7634).	Unincorporated Areas.	February 5, 2004, February 12, 2004, The County Journal.	Mr. Terry Moore, Randolph County Commissioner, #1 Taylor Street, Chester, IL 62233.	May 13, 2004	170575
Illinois: McHenry ..... (Case No.: 03–05–1458P). (FEMA Docket No. P–7634).	Village of Spring Grove.	January 8, 2004, January 15, 2004, The Northwest Herald.	Mr. Robert Martens, Village President, Village of Spring Grove, 7401 Meyer Road, Spring Grove, IL 60081.	December 11, 2003 ..	170485
Illinois: Will ..... (Case No.: 03–05–3973P). (FEMA Docket No. P–7634).	Unincorporated Areas.	January 21, 2004, January 28, 2004, The Enterprise.	Mr. Joseph Mikan, Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Janaury 5, 2004	170695
Missouri: Ste. Genevieve (Case No.: 03–07–1278P). (FEMA Docket No. P–7634).	City of Ste. Genevieve.	February 4, 2004, February 11, 2004, Ste. Genevieve Herald.	The Hon. Richard Greminger, Mayor, City of Ste. Genevieve, 165 South 4th Street, Ste. Genevieve, MO 63670.	May 12, 2004	290325
Missouri: Ste. Genevieve (Case No.: 03–07–1278P). (FEMA Docket No. P–7634).	Unincorporated Areas.	February 4, 2004, February 11, 2004, Ste. Genevieve Herald.	Mr. Albert Fults, Presiding Commissioner, Ste. Genevieve County, 55 South 3rd Street, Ste. Genevieve, MO 63670.	May 12, 2004	290833
New Mexico: Bernalillo ... (Case No.: 03–06–1727P). (FEMA Docket No. P–7634).	City of Albuquerque.	January 14, 2004, January 21, 2004, Albuquerque Journal.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	April 21, 2004	350002
New Mexico: Bernalillo ... (Case No.: 03–06–2543P). (FEMA Docket No. P–7634).	City of Albuquerque.	January 13, 2004, January 20, 2004, Albuquerque Journal.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	December 16, 2003 ...	350002
Oklahoma: Cleveland ..... (Case No.: 02–06–1713P). (FEMA Docket No. P–7634).	City of Norman ...	January 7, 2004, January 14, 2004, The Norman Transcript.	The Honorable Ron Henderson, Mayor, City of Norman, 2143 Jackson Drive, Norman, OK 73071.	April 14, 2004	400046
Oklahoma: Tulsa ..... (Case No.: 03–06–831P) (FEMA Docket No. P–7632).	City of Tulsa	November 18, 2003, November 25, 2003, Tulsa World.	The Honorable Bill LaFortune, Mayor, City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	November 5, 2003	405381

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas: Tarrant (Case No.: 04–06–383P) (FEMA Docket No. P–7634).	City of Bedford	January 29, 2004, February 5, 2004, The Star Telegram.	The Honorable John Williams, Mayor, City of Bedford, 1813 Reliance Parkway, Bedford, TX 76021.	May 6, 2004	480585
Texas: Dallas (Case No.: 03–06–699P) (FEMA Docket No. P–7634).	City of Carrollton	January 14, 2004, January 21, 2004, The Carrollton Leader.	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	April 21, 2004	480167
Texas: Collin (Case No.: 03–06–677P) (FEMA Docket No. P–7634).	Unincorporated Areas.	February 11, 2004, February 18, 2004, Plano Star Courier.	The Honorable Ron Harris, Collin County Judge, 210 S. McDonald Street, Suite 626, McKinney, TX 75069.	May 19, 2004	480130
Texas: Hidalgo (Case No.: 03–06–1004P). (FEMA Docket No. P–7634).	City of Edinburg	January 9, 2004, January 16, 2004, Edinburg Daily Review.	The Honorable Richard H. Garcia, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, TX 78540–1079.	December 16, 2003	480338
Texas: Tarrant (Case No.: 03–06–1206P). (FEMA Docket No. P–7628).	City of Fort Worth	August 22, 2003, August 29, 2003, The Star Telegram.	The Honorable Michael Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	November 28, 2003	480596
Texas: Williamson (Case No.: 03–06–695P) (FEMA Docket No. P–7628).	City of Georgetown.	August 20, 2003, August 27, 2003, Williamson County Sun.	The Honorable Gary Nelon, Mayor, City of Georgetown, P.O. Box 409, Georgetown, TX 78627.	November 26, 2003	480668
Texas: Dallas (Case No.: 03–06–700P) (FEMA Docket No. P–7634).	City of Mesquite	January 7, 2004, January 14, 2004, The Mesquite News.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	April 14, 2004	485490
Texas: Midland (Case No.: 03–06–2541P). (FEMA Docket No. P–7632).	City of Midland	November 12, 2003, November 19, 2003, Midland Reporter-Telegram.	The Honorable Michael J. Canon, Mayor, City of Midland, 300 North Loraine, Midland, TX 79701.	October 21, 2003	480477
Texas: Collin (Case No.: 03–06–685P) (FEMA Docket No. P–7634).	City of Plano	January 7, 2004, January 14, 2004, Plano Star Courier.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358.	December 16, 2003	480140
Texas: Bell (Case No.: 02–06–2439P). (FEMA Docket No. P–7634).	City of Temple	January 6, 2004, January 13, 2004, Temple Daily Telegram.	The Honorable Bill Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501.	April 13, 2004	480034
Texas: Williamson (Case No.: 03–06–695P) (FEMA Docket No. P–7628).	Unincorporated Areas.	August 20, 2003, August 27, 2003, Williamson County Sun.	The Honorable John C. Doerfler, Judge, Williamson County, 710 Main Street, Suite 201, Georgetown, TX 78616.	November 26, 2003	481079
Texas: Collin (Case No.: 03–06–677P) (FEMA Docket No. P–7634).	City of Wylie	February 11, 2004, February 18, 2004, The Wylie News.	The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, TX 75098.	May 19, 2004	480759

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–17963 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 04–139]

Inflation Adjustment of Maximum Forfeiture Penalties

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document increases the maximum monetary forfeiture penalties available to the Commission under its rules governing monetary forfeiture proceedings to account for inflation. The inflationary adjustment is necessary to implement the Debt Collection Improvement Act of 1996, which requires Federal agencies to adjust "civil monetary penalties provided by

law" at least once every four years. The increase covers the period between June of the year the particular forfeiture amount was last set or adjusted and June 2003. The increase in the Consumer Price Index for the relevant period was applied to each maximum penalty, and then rounded using the statutorily defined rules to adjust each maximum monetary forfeiture penalty accordingly. The base forfeiture amounts in the Commission's rules remain unchanged by this rule revision.

DATES: Effective September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Kathryn Berthot, Enforcement Bureau, Spectrum Enforcement Division, (202) 418–7454.

SUPPLEMENTARY INFORMATION: This is a summary of the Order by the Commission, FCC 04–139, adopted on June 14, 2004, and released on June 18, 2004. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC 20554 and also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., at 1–800–378–3160, CY–B402, 445 12th Street, SW., Washington, DC 20554.

This Order amends § 1.80(b) of the Commission's rules, 47 CFR 1.80(b), to increase the maximum penalties established in that section to account for inflation since the last adjustment to these penalties. The adjustment procedure is set forth in detail in § 1.80(b)(5) of the Commission's rules. That section implements the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461, which requires Federal agencies to adjust maximum statutory civil monetary penalties at least once every four years.

This Order adjusts the maximum penalties to account for the increase in the Consumer Price Index (CPI) between June of the year the forfeiture amount was last set or adjusted,[1] and June 2003. The increases were then rounded using the statutorily prescribed rules to produce the adjusted penalties. The Order also makes editorial amendments and corrections to § 1.80(b) of the Commission's rules.

The amendment of § 1.80(b) simply implements the requirements of the Debt Collection Improvement Act of 1986, 28 U.S.C. 2461, as incorporated in § 1.80(b)(5) of the Commission's rules, as well as updates and clarifies the rule to reflect the statute more precisely without substantively changing it. Moreover, since Congress has mandated these periodic rule changes and the Commission has no discretion but to make them, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(B).

Since a notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

The actions taken in this Order have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Comunications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

[1] Under the rounding rules set forth in section 1.80(b)(5)(ii), the inflation adjustment for a statutory forfeiture amount must reach a specific threshold before the forfeiture amount may be increased. Thus, different CPIs may be used to calculate the inflation factors for different statutory forfeitures, depending on when a particular forfeiture was last increased. The June 1999 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in sections 202(c) (the amount for each violation, not the per day amount for continuing violations), 203(e) (the amount for each violation, not the per day amount for continuing violations), 220(d), 503(b)(2)(A) (the maximum amount for continuing violations, not the amount for a single violation or single day of a violation), 503(b)(2)(B), and 503(b)(2)(C) (the maximum amount for continuing violations, not the amount for a single violation or single day of a violation). The June 1995 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in sections 202(d) (the per day amount for continuing violations), 203(e) (the per day amount for continuing violations), 205(b), 364(a), 364(b), 386(a), 386(b), 503(b)(2)(A) (the amount for a single violation or single day of a violation), 503(b)(2)(C) (the amount for a single violation or single day of a violation), 507(a), and 507(b). The June 1992 CPI is used to calculate the inflation factor for the section 634 forfeiture amount, and the June 1989 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in sections 214(d) and 219(b). Finally, the first inflation adjustment for each statutory forfeiture may not exceed 10 percent of the statutory maximum amount. *See* 47 CFR 1.80(b)(5), Note to paragraph (b)(5). This is the first inflation adjustment for the statutory forfeiture amounts in sections 364(b), 386(b) and 634 because this is the first time that the inflation adjustment for these forfeitures reached the specific threshold set forth in the rounding rules. Accordingly, the inflation adjustment for the forfeiture amounts in sections 364(b), 386(b) and 634 is limited to 10 percent.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i) and (j), 155, 225, 303(r), and 309.

■ 2. Section 1.80 is amended by:
■ a. Revising paragraphs (b)(1) through (b)(4);
■ b. Revising the introductory text of the note to paragraph (b)(4);
■ c. Revising section III of the note to paragraph (b)(4);
■ d. Revising paragraphs (b)(5) introductory text and (b)(5)(iii).

The revisions read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed $32,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $325,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $130,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,325,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $11,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $97,500 for

any single act or failure to act described in paragraph (a) of this section.

(4) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

Note to paragraph (b)(4):

Guidelines for Assessing Forfeitures

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in § 1.80(b)(5)(iii). These statutory maxima became effective September 7, 2004. Forfeitures issued under other sections of the Act are dealt with separately in section III of this note.

* * * * *

Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

Unlike section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. The one exception is section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The following amounts are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in section II of this note.

Violation	Statutory amount ($)
Sec. 202(c) Common Carrier Discrimination	$8,600 430/day.
Sec. 203(e) Common Carrier Tariffs	8,600 430/day.
Sec. 205(b) Common Carrier Prescriptions	18,200.
Sec. 214(d) Common Carrier Line Extensions	1,320/day.
Sec. 219(b) Common Carrier Reports	1,320.
Sec. 220(d) Common Carrier Records & Accounts	8,600/day.
Sec. 364(a) Forfeitures (Ships)	6,500 (owner).
Sec. 364(b) Forfeitures (Ships)	1,100 (vessel master).
Sec. 386(a) Forfeitures (Ships)	6,500/day (owner).
Sec. 386(b) Forfeitures (Ships)	1,100 (vessel master).
Sec. 634 Cable EEO	550/day.

(5) *Inflation adjustments to the maximum forfeiture amount.* (i) Pursuant to the Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321–358), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101–410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation at least once every four years using the method specified in the statute. This is to be done by determining the 'cost-of-living adjustment', which is the percentage (if any) by which the CPI for June of the preceding year exceeds the CPI for June of the year the forfeiture amount was last set or adjusted. The inflation adjustment is determined by multiplying the cost-of-living adjustment by the statutory maximum amount. Round off this result using the rules in paragraph (b)(5)(ii) of this section. Add the rounded result to the statutory maximum forfeiture penalty amount. The sum is the statutory maximum amount, adjusted for inflation.

* * * * *

(iii) The application of the inflation adjustments required by the DCIA, 28 U.S.C. 2461, results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum penalty after DCIA adjustment ($)
47 U.S.C. 202(c)	$8,600 430
47 U.S.C. 203(e)	8,600 430
47 U.S.C. 205(b)	18,200
47 U.S.C. 214(d)	1,320
47 U.S.C 219(b)	1,320
47 U.S.C. 220(d)	8,600
47 U.S.C. 362(a)	6,500
47 U.S.C. 362(b)	1,100
47 U.S.C. 386(a)	6,500
47 U.S.C. 386(b)	1,100
47 U.S.C. 503(b)(2)(A)	32,500 325,000
47 U.S.C. 503(b)(2)(B)	130,000 1,325,000
47 U.S.C. 503(b)(2)(C)	11,000 97,500
47 U.S.C. 507(a)	650
47 U.S.C. 507(b)	10
47 U.S.C. 554	550

* * * * *

[FR Doc. 04–16973 Filed 8–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket No. 02–34; FCC 04–92]

Space Station Licensing Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission seeks to extend mandatory electronic filing to all satellite and earth station applications. The Commission also plans to implement two measures that allow space station operators to make certain changes to their systems without prior regulatory approval. First, we allow direct broadcast satellite (DBS) licensees and Digital Audio Radio Service (DARS) satellite licensees to use a streamlined procedure when relocating satellites for fleet management purposes. Second, we allow Non-Geostationary Satellite Orbit (NGSO) system operators to activate in-orbit spares without prior authorization from the Commission, provided that the activation does not cause the operator to exceed the total number of space stations that the licensee was authorized

to operate under its blanket license for that system. These rule revisions represent another step in our continuing effort to eliminate outdated regulatory requirements and expedite provision of satellite services to the public.

DATES: The revisions to §§ 1.10000, 1.10006, 1.10007, 25.113 and 25.118(e) will become effective September 7, 2004. The revisions to §§ 25.110, 25.114, 25.115, 25.116, 25.117, 25.118(a), 25.130, 25.131, and 25.154 contain information requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

ADDRESSES: Comments on the information collection requirement should be addressed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW., Washington, DC 20554, or via Internet to *Judy.Herman@fcc.gov*, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to *fain_t@al.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite Division, International Bureau, at (202) 418–1539.

SUPPLEMENTARY INFORMATION: This is a summary of the *Fourth Report and Order* in IB Docket No. 02–34, adopted on April 9, 2004, and released on April 16, 2004 (FCC 04–92, released April 16, 2004), is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *http://www.BCPIWEB.com*.

In 2000 and 2002, the Commission initiated proceedings to reform and streamline its earth station and space station licensing procedures, respectively. In July 2003, the Commission adopted a *Second Further Notice of Proposed Rulemaking* (2nd FNPRM), 68 FR 53702, September 12, 2003, in both these proceedings. The Commission proposed extending mandatory electronic filing requirements to all space station and earth station applicants. The Commission also proposed extending the streamlined procedure for fleet management modifications to DBS and DARS licensees. Only one party filed comments in response to the 2nd FNPRM, Sirius Satellite Radio, Inc. (Sirius). No replies were filed.

The Commission observed that it has mandatory electronic filing for several but not all satellite and earth station filings. We require all space station applicants other than DBS and DARS applicants to file electronically. We also require electronic filing for routine earth station license applications, and for earth station assignments and transfer of control applications. Parties filing petitions to deny routine earth station applications, or other pleadings in response to routine earth station applications, must also file electronically.

Paperwork Reduction Act: This *Fourth Report and Order* contains new and modified information collections. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, has previously invited the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *Fourth Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. *See* 69 FR 26391, May 12, 2004.

A. Mandatory Electronic Filing

1. In the 2nd FNPRM, the Commission proposed extending electronic filing requirements to all pleadings and other filings governed by part 25 of the Commission's rules. The Commission noted that electronic filing should enable it to act on applications more quickly. The Commission explained further that requiring certain types of applications to be filed electronically and permitting others to be filed manually adds complexity to the application filing requirements. Thus, adopting mandatory electronic filing for all satellite and earth station filings would simplify the filing requirements. The Commission also proposed requiring DARS applicants to file applications on Schedule S. The Commission adopted Schedule S in its current form in the *Third Space Station Reform Order*, 68 FR 63994, November 12, 2003, to standardize many of the information requirements associated with satellite license applications. The Commission intended Schedule S to streamline review of satellite applications, and to facilitate electronic filing: Schedule S is required of all space station applicants other than DARS applicants.

2. *Discussion*. Sirius supports extending mandatory electronic filing to all satellite and earth station applications, to simplify part 25 and to facilitate interested parties' access to information. We agree. Accordingly, we adopt mandatory electronic filing for all applications and pleadings that are governed by part 25. We delegate authority to the Chief, International Bureau, to make the electronic filing system revisions necessary to implement these new electronic filing requirements. We also direct the International Bureau to issue a public notice at least 30 days before the new electronic filing requirements will take effect.

3. Sirius also argues that the edit checks in Schedule S should allow applicants to respond "Not Applicable" or "N/A" where appropriate. We agree, and direct the International Bureau to add "Not Applicable" or "N/A" responses to Schedule S where appropriate.

B. Streamlined Fleet Management Modification Procedure for DBS and DARS Licensees

4. *Background*. In the *Second Space Station Reform Order*, 68 FR 62247, November 3, 2003, the Commission adopted a streamlined procedure for GSO licensees seeking to relocate two or more satellites among orbit locations at which they are licensed. The Commission referred to such relocations as "fleet management" license modifications. Under this procedure, a space station operator may modify its license without prior authorization, but upon 30 days' prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets the following requirements:

(1) The space station licensee will relocate a Geostationary Satellite Orbit (GSO) space station to another orbit location that is assigned to that licensee;

(2) The relocated space station licensee will operate with the same technical parameters as the space station initially assigned to that location, or within the original satellite's authorized and/or coordinated parameters;

(3) The space station licensee certifies that it will comply with all the conditions of its original license and all applicable rules after the relocation;

(4) The space station licensee certifies that it will comply with all applicable coordination agreements at the newly occupied orbital location;

(5) The space station licensee certifies that it has completed any necessary coordination of its space station at the new location with other potentially affected space station operators;

(6) The space station licensee certifies that it will limit operations of the space station to Tracking, Telemetry, and Control (TT&C) functions during the relocation and satellite drift transition period; and

(7) The space station licensee certifies that the relocation of the space station does not result in a lapse of service for any current customer.

The Commission also noted that, because DBS and DARS were not included in the *Space Station Reform NPRM*, 68 FR 51546, August 27, 2003, the streamlined procedure for satellite fleet management modifications adopted in the *Second Space Station Reform Order* was limited to modifications of satellite licenses other than DBS and DARS.

5. In the 2nd FNPRM, 68 FR 53702, September 12, 2003, the Commission proposed to extend the satellite fleet management modification procedure to DBS and DARS licenses. It stated that it was not aware of any public policy that would be served by precluding DBS and DARS licensees from using this procedure, which allows licensees to respond faster to changing circumstances regarding fleet deployment.

6. The Commission also requested comment on whether DBS and DARS licensees should be required to make any certifications that are not applicable to FSS providers making fleet management modifications. For example, one possible certification might be that a proposed DBS modification shall not cause greater interference than that which would occur from the current U.S. assignments in the International Telecommunication Union (ITU) Region 2 BSS Plan and its associated Feeder Link Plan. Another possibility might be to require DBS operators to certify that they will continue to meet the geographic service requirements that apply to DBS. The Commission also invited parties to recommend other possible certification requirements.

7. *Discussion.* No DBS operators commented on this proposal, but one DARS operator, Sirius, did comment. We conclude that extending the fleet management modification procedure to DBS licensees would enable us to act on DBS fleet management modification requests faster than we do now. Accordingly, we adopt a fleet management modification procedure for DBS licensees.

8. We also adopt the proposals in the 2nd FNPRM, to require DBS licensees using the fleet management modification procedure to certify that they will not cause greater interference than that which would occur from the current U.S. assignments in the International Telecommunication Union (ITU) Region 2 BSS Plan and its associated Feeder Link Plan. We will also require certifications that the DBS licensee will meet the geographic service requirements in § 25.148(c) of the Commission's rules. These certifications are necessary to ensure that DBS fleet management modifications are consistent with the public interest, convenience, and necessity.

9. Sirius states that it does not oppose the fleet management proposal for GSO DARS systems. Accordingly, we revise the streamlined modification procedure for fleet management so that it also applies to DARS space stations. Moreover, in the 2nd FNPRM, the Commission did not propose to require DARS licensees proposing fleet management modifications to make any additional certifications, as it did for DBS licensees as discussed above, and no commenter proposed any such certifications. Therefore, GSO DARS licensees proposing fleet management modifications need to make only the seven certifications adopted in the Second Space Station Reform Order, 68 FR 62247, November 3, 2003. DBS and GSO DARS licensees are permitted to make fleet management modification as with other GSO licensees, by requesting a modification by filing Form 312 and making the needed certifications.

C. Streamlined Modification Procedure for NGSO Licensees

10. *Background.* Sirius proposes a streamlined procedure for NGSO system operators seeking to launch a ground spare as an in-orbit spare, and later operate it. Under the Sirius proposal, the applicant would file an application to launch the satellite. In the event that the license is granted, the applicant would notify the Commission of the launch date. Later, the applicant would also notify the Commission if and when it begins to operate the satellite. Sirius argues that in-orbit spares enable licensees to replace decommissioned satellites promptly. Sirius also claims that this is comparable to the fleet management procedure for GSO satellites. No reply comments were filed on Sirius's proposal.

11. *Discussion.* We agree with Sirius that its proposed procedure is comparable to the fleet management procedure for GSO satellites. Generally, activating an in-orbit spare in an NGSO satellite system involves moving the satellite from one previously authorized orbit to another. Similarly, fleet management modifications involve moving a GSO satellite from one previously authorized orbit location to another. Therefore, we adopt the Sirius proposal with one minor revision. We will permit all NGSO system operators to launch in-orbit spares, and to activate them without prior authorization from the Commission, provided that the activation does not cause the operator to exceed the total number of space stations that the licensee was authorized to operate under its blanket license for that system, and the spare satellite has technical characteristics identical to the other satellites in the constellation. If the activation of a spare satellite would cause the licensee to exceed its total number of authorized satellites, if the licensee plans to operate the satellite in an orbit that was not previously authorized, or if the spare has different technical characteristics, including but not limited to frequency bands, the licensee will need to seek a modification of its license. This is consistent with provisions that the Commission adopted for NGSO FSS licensees in the Ku-band and Ka-band.

12. In summary, NGSO licensees using this procedure will be required to notify the Commission that they have launched a spare, or activated a ground spare, no later than 30 days after the launch or activation. Licensees will be required to make these notifications on Form 312. Since the satellite launches and activations contemplated here will not cause the licensee to exceed the number of satellites it is authorized to operate, we conclude that we will not require any fee for these notifications.

D. Conclusion

13. In this Order, we extend mandatory electronic filing to all space station and earth station applications, related pleadings, and other filings governed by part 25. We also allow DBS and DARS licensees to take advantage of the fleet management modification procedure adopted for GSO FSS licensees in the *Second Space Station Reform Order*. Furthermore, we allow NGSO system operators to activate in-orbit spares without prior authorization from the Commission, provided that the activation does not cause the operator to exceed the total number of space stations that the licensee was authorized to operate under its blanket license for that system.

14. Finally, we make revisions to part 1, subpart Y, to conform that subpart to

the revisions to part 25 we adopt in this *Fourth Report and Order.*

E. Procedural Matters

15. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. In this *Fourth Report and Order*, the Commission extends electronic filing requirements to satellite and earth station operators that are not currently subject to those requirements. The Commission believes that filing applications electronically is no more burdensome than submitting paper applications, because a majority of applicants currently file their applications electronically on a voluntary basis. We also make an existing streamlined license modification procedure available to DBS and DARS licensees, and adopt a new streamlined license modification procedure for NGSO licensees. The effect of these rule revisions is to reduce the administrative burdens of some space station licensees. We expect that these changes will be minimal and positive. Therefore, we certify that the requirements of this *Fourth Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Fourth Report and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Fourth Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

17. *Privacy Impact Assessment.* The Commission has performed a Privacy Impact Assessment as required by the Privacy Act, as amended by the E-Government Act of 2002. The Commission has determined that this information collection does not affect individuals or household; thus, there are no impacts under the Privacy Act.

F. Ordering Clauses

18. Accordingly, *it is ordered*, pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this Fourth Report and Order in IB Docket No. 02–34, and Fourth Report and Order in IB Docket No. 00–248, are hereby adopted.

19. *It is further ordered* that parts 1 and 25 of the Commission's rules are amended as set forth in the rule changes.

20. *It is further ordered* that the revisions to §§ 1.10000, 1.10006, 1.10007, 25.113 and 25.118(e) will become effective September 7, 2004. The revisions to §§ 25.110, 25.114, 25.115, 25.116, 25.117, 25.118(a), 25.130, 25.131, and 25.154 contain information requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

21. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 25

Administrative practice and procedure, Satellites.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR, parts 1 and 25, to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Revise § 1.10000 to read as follows:

§ 1.10000 What is the purpose of these rules?

(a) These rules are issued under the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*, and the Submarine Cable Landing License Act, 47 U.S.C. 34–39.

(b) This subpart describes procedures for electronic filing of International and Satellite Services applications using the International Bureau Filing System.

(c) More licensing and application descriptions and directions, including but not limited to specifying which International and Satellite service applications must be filed electronically, are in parts 1, 25, 63, and 64 of this chapter.

■ 3. Revise § 1.10006 to read as follows:

§ 1.10006 Is electronic filing mandatory?

(a) Mandatory electronic filing requirements for applications for international and satellite services are set forth in parts 1, 25, 63, and 64 of this chapter.

(b) If you are not required to file an international or satellite application, you may file that application electronically on a voluntary basis. However, we encourage you to use IBFS to increase time-savings and efficiency.

■ 4. Amend § 1.10007 by revising paragraph (b) to read as follows:

§ 1.10007 What applications can I file electronically?

* * * * *

(b) For a complete list of applications you can file electronically, *see* the IBFS Web site at *www.fcc.gov/ibfs.*

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 5. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 6. Revise § 25.110 to read as follows:

§ 25.110 Filing of applications, fees, and number of copies.

(a) You can obtain application forms for this part by going online at *www.fcc.gov/ibfs*, where you may complete the form prior to submission via IBFS, the IB electronic filing system.

(b) *Submitting your application.* All space station applications and all earth station applications must be filed electronically on Form 312. In this part, any party permitted or required to file information on Form 312 must file that information electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(c) All correspondence and amendments concerning any application must identify:

(1) The satellite radio service;

(2) The applicant's name;

(3) Station location;

(4) The call sign or other identification of the station; and

(5) The file number of the application involved.

(d) *Copies.* Applications must be filed electronically though IBFS. The Commission will not accept any paper version of any application.

(e) *Signing.* Upon filing an application electronically, the applicant must print out the filed application, obtain the proper signatures, and keep the original in its files.

(f) The applicant must pay the appropriate fee for its application and submit it in accordance with part 1, subpart G of this chapter.

■ 7. Section 25.113 is amended by revising paragraph (g) introductory text and by adding paragraph (h) to read as follows:

§ 25.113 Construction permits, station licenses and launch authority.

* * * * *

(g) Except as set forth in paragraph (h) of this section, a launch authorization and station license (*i.e.*, operating authority) must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization may be included in an application for space station license. However, an application for authority to launch and operate an on-ground spare satellite will be considered pursuant to the following procedures:

* * * * *

(h) Licensees of Non-Geostationary Satellite Orbit (NGSO) satellite systems need not file separate applications to operate technically identical in-orbit spares authorized as part of a blanket license pursuant to § 25.114(e) or any other satellite blanket licensing provision in this part. However, the licensee shall notify the Commission within 30 days of bringing the in-orbit spare into operation, and certify that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission, and that the licensee will operate the space station within the applicable terms and conditions of its license. These notifications must be filed electronically on FCC Form 312.

■ 8. Section 25.114 is amended by revising paragraph (b) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(b) Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation. Each application must also contain the formal waiver required by section 304 of the Communications Act, 47 U.S.C. 304. The technical information for a proposed satellite system specified in paragraph (c) of this section must be filed on FCC Form 312, Main Form and Schedule S. The technical information for a proposed satellite system specified in paragraph (d) of this section need not be filed on any prescribed form but should be complete in all pertinent details. Applications for all new space station authorizations must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

* * * * *

■ 9. Section 25.115 is amended by revising paragraph (a) to read as follows:

§ 25.115 Application for earth station authorizations.

(a)(1) *Transmitting earth stations.* Except as provided under § 25.113(b), Commission authorization must be obtained for authority to construct and/or operate a transmitting earth station. Applications shall be filed electronically on FCC Form 312, Main Form and Schedule B, and include the information specified in § 25.130, except as set forth in paragraph (a)(2) of this section.

(2) Applicants for licenses for transmitting earth station facilities are required to file on Form 312EZ, to the extent that form is available, in the following cases:

(i) The earth station will transmit in the 3700–4200 MHz and 5925–6425 MHz band, and/or the 11.7–12.2 GHz and 14.0–14.5 GHz band; and

(ii) The earth station will meet all the applicable technical specifications set forth in part 25 of this chapter.

(3) If Form 312EZ is not available, earth station license applicants specified in paragraph (a)(2) must file on FCC Form 312, Main Form and Schedule B, and include the information specified in § 25.130.

(4) Applications for earth station authorizations must be filed in accordance with the pleading limitations, periods and other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such earth station applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter;

* * * * *

■ 10. Section 25.116 is amended by revising paragraph (e) to read as follows:

§ 25.116 Amendments to applications.

* * * * *

(e) Any amendment to an application shall be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter. Amendments to space station applications must be filed on Form 312 and Schedule S. Amendments to space station applications must be filed on Form 312 and Schedule B.

■ 11. Section 25.117 is amended by revising paragraph (c) introductory text to read as follows:

§ 25.117 Modification of station license.

* * * * *

(c) Applications for modification of earth station authorizations shall be submitted on FCC Form 312, Main Form and Schedule B. Applications for modification of space station authorizations shall be submitted on FCC Form 312, Main Form and Schedule S. Both earth station and space station modification applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter. In addition, any application for modification of authorization to extend a required date of completion, as set forth in § 25.133 for earth station authorization or § 25.164 for space stations, or included as a condition of any earth station or space station authorization, must include a verified statement from the applicant:

* * * * *

■ 12. Section 25.118 is amended by revising paragraph (a) introductory text, the introductory text of paragraph (e), and adding paragraphs (e)(8) and (e)(9), to read as follows:

§ 25.118 Modifications not requiring prior authorization.

(a) *Earth station license modifications, notification required.* Authorized earth station operators may make the following modifications to their licenses without prior Commission authorization, provided that the operators notify the Commission, using FCC Form 312 and Schedule B, within 30 days of the modification. This notification must be filed electronically

through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter:

* * * * *

(e) *Space station modifications.* A space station operator may modify its license without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets the following requirements. This notification must be filed electronically on Form 312 through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter:

* * * * *

(8) For DBS licensees, the space station licensee must certify that it will not cause greater interference than that which would occur from the current U.S. assignments in the International Telecommunication Union (ITU) Region 2 BSS Plan and its associated Feeder Link Plan.

(9) For DBS licensees, the space station licensee must certify that it will meet the geographic service requirements in § 25.148(c).

■ 13. Section 25.130 is amended by revising paragraph (a) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

(a) Applications for a new or modified transmitting earth station facility shall be submitted on FCC Form 312, Main Form and Schedule B, accompanied by any required exhibits, except for those earth station applications filed on FCC Form 312EZ pursuant to § 25.115(a). All such earth station license applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

* * * * *

■ 14. Section 25.131 is amended by revising paragraph (a) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

(a) Except as provided in paragraphs (b) and (j) of this section, and section 25.115(a), applications for a license for a receive-only earth station shall be submitted on FCC Form 312, Main Form and Schedule B, accompanied by any required exhibits. All such earth station license applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

* * * * *

■ 15. Section 25.154 is amended by revising paragraph (a)(3), paragraph (c), and paragraph (d), to read as follows:

§ 25.154 Opposition to applications and other pleadings.

(a) * * *

(3) Filed in accordance with the pleading limitations, periods and other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such petitions must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter;

* * * * *

(c) Oppositions to petitions to deny an application or responses to comments and informal objections regarding an application may be filed within 10 days after the petition, comment, or objection is filed and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such oppositions must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(d) Reply comments by the party that filed the original petition may be filed with respect to pleadings filed pursuant to paragraph (c) of this section within 5 days after the time for filing oppositions has expired unless the Commission otherwise extends the filing deadline and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such reply comments must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

[FR Doc. 04–16975 Filed 8–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2266; MB Docket No. 04–97, RM–10897, RM–10898; MB Docket No. 04–98, RM–10899; MB Docket No. 04–99, RM–10900; MB Docket No. 04–100, RM–10901; MB Docket No. 04–101, RM–10902, RM–10903; MB Docket No. 04–102, RM–10904, RM–10905, RM–10906; MB Docket No. 04–103, RM–10907; MB Docket No. 04–104, RM–10908, MB Docket No. 04–105, RM–10909, RM–10910, RM–10911; MB Docket No. 04–106, RM–10912; MB Docket No. 04–107, RM–10913, RM–10914; MB Docket No. 04–108, RM–10915, RM–10916, RM–10917, RM–10918; MB Docket No. 04–109, RM–10919; MB Docket No. 04–110, RM–10920, RM–10921, RM–10922]

Radio Broadcasting Services; Canton, IL, Cedarville, IL, Council Grove, KS, Clifton, IL, Farmersburg, IN, Freeport, IL, Fowler, IN, Golden Meadow, LA; Homer, LA, Madison, IN, Pinckneyville, IL, Ringgold, LA, Smith Mills, KY and Terre Haute, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants fourteen reservation proposals requesting to amend the FM Table of Allotments by reserving certain vacant FM allotments for noncommercial educational use in Canton, Illinois, Cedarville, Illinois, Council Grove, Kansas, Clifton, Illinois, Farmersburg, Indiana, Freeport, Illinois, Fowler, Indiana, Golden Meadow, Louisiana, Homer, Louisiana, Madison, Indiana, Pinckneyville, Illinois, Terre Haute, Indiana, Ringgold, Louisiana and Smith Mills, Kentucky. At the request of Illinois State University and Starboard Media Foundation, Inc., the Audio Division grants petitions requesting to reserve vacant Channel 277A at Canton, Illinois for noncommercial educational use. The reference coordinates for Channel *277A at Canton are 40–28–27 North Latitude and 90–03–01 West Longitude. At the request of The Catholic Diocese of Rockford, the Audio Division grants a petition requesting to reserve vacant Channel 258A at Cedarville, Illinois for noncommercial educational use. The reference coordinates for Channel *258A at Cedarville are 42–21–50 North Latitude and 89–40–59 West Longitude. At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 297A at Clifton, Illinois for noncommercial educational use. The reference coordinates for Channel

*297A at Clifton are 40–52–0 North Latitude and 87–58–0 West Longitude. *See* Supplementary Information, infra.

DATES: Effective September 7, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 04–97, 04–98, 04–99, 04–100, 04–101, 04–102, 04–103, 04–104, 04–105, 04–106, 04–107, 04–108, 04–109, 04–110 adopted July 21, 2004 and released July 23, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via the Web site *www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 295A at Freeport, Illinois for noncommercial educational use. The reference coordinates for Channel *295A at Freeport are 42–19–28 North Latitude and 89–35–13 West Longitude. At the request of Starboard Media Foundation, Inc. and Miller Media, the Audio Division grants petitions to reserve vacant Channel 282A at Pinckneyville, Illinois for noncommercial educational use. The reference coordinates for Channel *282A at Pinckneyville are 38–5–30 North Latitude and 89–22–46 West Longitude. At the request of American Family Association, Starboard Media Foundation, Inc., and Word Power, Inc., the Audio Division grants petitions requesting to reserve vacant Channel 242A at Farmersburg, Indiana for noncommercial educational use. The reference coordinates for Channel *242A at Farmersburg are 39–15–18 North Latitude and 87–23–0 West Longitude. At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 291A at Fowler, Indiana for noncommercial educational use. The reference coordinates for Channel *291A at Fowler are 40–38–5 North Latitude and 87–18–46 West Longitude. At the request of American Family Association, the Audio Division grants a petition requesting to reserve vacant Channel 266A at Madison, Indiana for noncommercial educational use. The reference coordinates for Channel *266A at Madison are 38–49–15 North Latitude and 85–18–46 West Longitude. At the request of Living Proof, Inc., Word Power, Inc. and The Trustees of Indiana University, the Audio Division grants petitions requesting to reserve vacant Channel 298B at Terre Haute, Indiana for noncommercial educational use. The reference coordinates for Channel *298B at Terre Haute are 39–30–14 North Latitude and 87–26–37 West Longitude. At the request of Great Plains Christian Radio, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 281C3 at Council Grove, Kansas for noncommercial educational use. The reference coordinates for Channel *281C3 at Council Grove are 38–39–42 North Latitude and 96–29–18 West Longitude. At the request of American Family Association and Starboard Media Foundation, Inc., the Audio Division grants petitions requesting to reserve vacant Channel 233A at Smith Mills, Kentucky for noncommercial educational use. The reference coordinates for Channel *233A at Smith Mills are 37–47–26 North Latitude and 87–55–23 West Longitude. At the request of American Family Association, Starboard Media Foundation, Inc., Providence Educational Foundation, and Calvary of New Orleans, the Audio Division grants petitions requesting to reserve vacant Channel 289C2 at Golden Meadow, Louisiana for noncommercial educational use. The reference coordinates for Channel *289C2 at Golden Meadow are 29–14–0 North Latitude and 90–15–0 West Longitude. At the request of American Family Association, the Audio Division grants a petition requesting to reserve vacant Channel 272A at Homer, Louisiana for noncommercial educational use. The reference coordinates for Channel *272A at Homer are 32–42–41 North Latitude and 92–56–35 West Longitude. At the request of American Family Association, Starboard Media Foundation, Inc., Southern Cultural Outreach Association, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 253C3 at Ringgold, Louisiana for noncommercial educational use. The reference coordinates for Channel *253C3 at Ringgold are 32–19–49 North Latitude and 93–12–33 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel *277A and by removing Channel 277A at Canton; by adding Channel *258A and by removing Channel 258A at Cedarville; by adding Channel *297A and by removing Channel 297A at Clifton; and by adding Channel *295A and by removing Channel 295A at Freeport; and by adding Channel *282A and by removing Channel 282A at Pinckneyville.

■ 3. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Channel *242A and by removing Channel 242A at Farmersburg; by adding Channel *291A and by removing Channel 291A at Fowler; by adding Channel *266A and by removing Channel 266A at Madison; and by adding Channel *298B and by removing Channel 298B at Terre Haute.

■ 4. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel *281C3 and by removing Channel 281C3 at Council Grove.

■ 5. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Channel *233A and by removing Channel 233A at Smith Mills.

■ 6. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel *289C2 and by removing Channel 289C2 at Golden Meadow; by adding Channel *272A and by removing Channel 272A at Homer; and by adding Channel *253C3 and by removing Channel 253C3 at Ringgold.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–17901 Filed 8–5–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040802222–4222–01; I.D. 072804A]

RIN 0648–AS52

Atlantic Highly Migratory Species (HMS) Fisheries; Pelagic and Bottom Longline Fisheries; Correction

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

ACTION: Final rule; amendment.

SUMMARY: This rule corrects the gear requirements for bottom longline fishermen that were inadvertently changed in a July 2004 final rule to minimize sea turtle bycatch and bycatch mortality in the pelagic longline fishery.

DATES: This final rule is effective August 3, 2004, except for the amendment to § 635.21(a)(3), which is effective on August 6, 2004. Section 635.21 (d)(3)(iv) is not applicable until further notification is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at 301–713–2347, fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP)and Amendment 1 to the Atlantic Billfish Fishery Management Plan are implemented by regulations at 50 CFR part 635. The Atlantic pelagic and bottom longline fisheries for these HMS are also subject to the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

On December 24, 2003 (68 FR 74746), NMFS published a final rule implementing the final regulations described in Amendment 1 to the HMS FMP. These regulations required bottom longline fishermen to carry and use linecutters and dipnets to release sea turtles, prohibited sharks, and smalltooth sawfish as of February 1, 2004. At the time of publication, these linecutter and dipnet requirements were the same as those required in the HMS pelagic longline fishery to release sea turtles.

On July 6, 2004 (69 FR 35599), NMFS published a final rule to reduce sea turtle bycatch and bycatch mortality in the Atlantic pelagic longline fishery. That rulemaking was based on the results of the 3–year Northeast Distant (NED) Closed Area research experiment involving: interactions of pelagic longline (PLL) fishing gear and Atlantic sea turtles, other available studies and information on circle hook and bait treatments, and public comments. As part of that rulemaking, NMFS redefined the type of equipment and the handling guidelines that pelagic longline fishermen must carry and use to release sea turtles. These new requirements become effective on August 5, 2004.

In changing the requirements for pelagic longline fishermen, NMFS inadvertently changed the requirements for bottom longline fishermen by failing to correct a paragraph cross-reference referring to the previous linecutter and dipnet requirements. Thus, the regulatory text in the July 6, 2004 (69 FR 35599) final rule indicated that bottom longline fishermen would also need to carry the additional equipment and use the revised handling procedures established for pelagic longline fishermen. This was not the intent of that. Rather, the rule was intended to affect only Atlantic HMS fishermen using pelagic longline gear. This action corrects the change in the regulatory text by replacing the incorrect paragraph cross-reference with the linecutter and dipnet regulations from the December 24, 2003 (68 FR 74746) final rule. This action would not change the intent of either the December 24, 2003, or July 6, 2004, final rules, and would result in the existing bottom longline regulations remaining in effect. NMFS intends to update the gear requirements for the bottom longline fishery to reflect recent changes in gear requirements for the pelagic longline fishery. However, NMFS has not yet analyzed the potential impacts of such an action, or provided an opportunity for public comment on potential gear changes in the bottom longline fishery. Thus, any such change will need to be part of a future rulemaking.

Classification

The Assistant Administrator for Fisheries (AA), under 5 U.S.C. 553(b)(B), finds that providing prior notice and an opportunity for public comment on this final rule is unnecessary and contrary to the public interest. This rule corrects regulatory text from a July 6, 2004 (69 FR 35599) pelagic longline rule that would inadvertently change existing bottom longline requirements. This action corrects the regulatory text to restore the linecutter and dipnet requirements for the bottom longline fishery from a December 24, 2003 (68 FR 74746) final rule, consistent with the intent of both the December 2003 final rule and the July 6, 2004, final rule. As the July 6, 2004, rule will not be effective until August 5, 2004, notice and comment are unnecessary, because this action would simply maintain regulations currently in effect and not have a substantive effect on the fishery. Further delay in taking this action is contrary to the public interest. Without expedient action, there would be adverse economic impacts on fishery participants from implementation of the July 2004 regulations and potential confusion for vessel owners and enforcement. These corrections would maintain the currently existing regulations and would not cause fishermen to purchase additional gear. For the above reasons, there is also good cause under 5 U.S.C. 553(d)(3)to waive the 30–day delay in effectiveness.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This action is not significant under the meaning of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 3, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. Effective August 6, 2004, in § 635.21, paragraph (a)(3) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(3) All vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna

longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury," and all vessels with pelagic or bottom longline gear on board must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

■ 3. Paragraph (d)(3) to § 635.21 is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(3) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(i) Possession and use of required mitigation gear. Line clippers meeting minimum design specifications as specified in paragraph (d)(3)(i)(A) of this section and dipnets meeting minimum standards prescribed in paragraph (d)(3)(i)(B) of this section must be carried on board and must be used to disengage any hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish, in accordance with the requirements specified in paragraph (d)(3)(ii) of this section.

(A) Line clippers. Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper is a model that meets these minimum design standards and may be fabricated from readily available and low-cost materials (65 FR 16347, March 28, 2000). The minimum design standards for line clippers are as follows:

(*1*) A protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to minimize direct contact of the cutting surface with sea turtles, prohibited sharks, smalltooth sawfish, or users of the cutting blade.

(*2*) Cutting blade edge. The blade must be able to cut 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(*3*) An extended reach holder for the cutting blade. The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(*4*) Secure fastener. The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(B) Dipnets. Dipnets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that prevents injury and trauma to sea turtles. The minimum design standards for dipnets are as follows:

(*1*) Extended reach handle. The dipnet must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(*2*) Size of dipnet. The dipnet must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may not exceed 3 inches x 3 inches (7.62 cm x 7.62 cm).

(ii) Handling requirements. (A) The dipnets required by this paragraph should be used to facilitate access and safe handling of sea turtles where feasible. The line clippers must be used to disentangle sea turtles, prohibited sharks, or smalltooth sawfish from fishing gear or to cut fishing line as close as possible to a hook that cannot be removed without causing further injury.

(B) When practicable, active and comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in § 223.206(d)(1) of this title.

(C) If a sea turtle is too large or hooked in a manner that precludes safe boarding without causing further damage or injury to the turtle, line clippers described in paragraph (c)(5)(i)(A) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(D) If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible.

(iii) Corrodible hooks. Vessels that have bottom longline gear on board and that have been issued, or required to have, a limited access shark permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, must only have corrodible hooks on board.

(iv) Possess and use a dehooking device that meets the minimum design standards. The dehooking device must be carried on board and must be used to remove the hook from any hooked sea turtle, prohibited shark, or other animal, as appropriate. The dehooking device should not be used to release smalltooth sawfish. NMFS will file with the Office of the **Federal Register** for publication the minimum design standards for approved dehooking devices. NMFS may also file with the Office of the **Federal Register** for publication any additions and/or amendments to the minimum design standards.

* * * * *

[FR Doc. 04–18032 Filed 8–3–04; 2:51 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040507144–4213–02; I.D.043004A]

RIN 0648–AQ85

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery

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

ACTION: Final rule, 2004 specifications

SUMMARY: NMFS issues 2004 specifications for the Atlantic bluefish fishery, including total allowable harvest levels (TAL), state-by-state commercial quotas, and a recreational harvest limit and possession limit for Atlantic bluefish off the east coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Effective September 7, 2004, through December 31, 2004.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and Essential Fish Habitat Assessment (EFHA) are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA/EFHA are accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104, fax 978–281–9135, e-mail *myles.a.raizin@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP

prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The FMP requires that the Council recommend, on an annual basis, TAL, which is comprised of a commercial quota and recreational harvest limit. This rule implements final specifications for the Atlantic bluefish fishery for 2004 that are unchanged from the proposed specifications published on May 19, 2004 (69 FR 28875). A complete discussion of the development of these specifications is included in the proposed rule and is not repeated here. These measures are the same as those implemented for 2004 by the states under the Atlantic States Marine Fisheries Commission's Interstate FMP.

Final Specifications

TAL

For the 2004 fishery, the stock rebuilding program in the FMP restricts F to 0.31. However, the 2002 fishery (the most recent fishing year for which F can be calculated) produced an F of only 0.184. Therefore, in accordance with the FMP, the measures established for 2004 were developed to achieve F=0.184. Projection results indicate that the bluefish stock will increase to an estimated biomass of 165.853 million lb (365.504 million kg) in 2004. This biomass can produce a Total Allowable Catch (TAC) of 34.215 million lb (15.5 million kg) in 2004 at F=0.184. The TAL for 2004 is derived from this value by subtracting estimated discards of 2.365 million lb (1.06 million kg) from the TAC. This results in a TAL for 2004 of 31.85 million lb (14.45 million kg).

Commercial Quota and Recreational Harvest Limit

Consistent with the FMP and regulations governing the bluefish fishery, NMFS has transferred 5.085 million lb (2.036 million kg) from the initial 2004 recreational allocation of 26.435 million lb (11.990 million kg) to the commercial fishery, resulting in a 2004 recreational harvest limit of 21.350 million lb (9.684 million kg) and a commercial quota of 10.5 million lb (4.76 million kg). The 2004 commercial quota would be the same as was allocated in 2003 and also as implemented by the states for 2004 under the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Bluefish. A Notice of Request for Proposals was published in the **Federal Register** to solicit research proposals for 2004 that could utilize research set-aside (RSA) TAC authorized by the FMP, based on research priorities identified by the Council (January 27, 2003; 68 FR 3864). One research project that would utilize bluefish RSA has been approved by the NOAA Grants Office. Therefore, a 297,750–lb (135,057–kg) RSA is specified. Due to the allocation of the bluefish RSA, the adjusted commercial quota for 2004 is 10.401 million lb (4.718 million kg) and the adjusted recreational harvest limit is 21.150 million lb (9.59 million kg).

Recreational Possession Limit

A recreational possession limit of 15 fish will be maintained for the 2004 fishing year.

State Commercial Allocations

The annual commercial quota for bluefish will be distributed to the states (See Table 1.), based on the percentages specified in the FMP, less the proposed RSA allocation.

TABLE 1.—ANNUAL BLUEFISH STATE COMMERCIAL QUOTAS

State	% of quota	2004 Commercial Quota (lb)	2004 Commercial Quota (kg)	2004 Commercial Quota (lb) With Research Set-Aside	2004 Commercial Quota (kg) With Research Set-Aside
ME	0.6685	70,193	31,839	69,536	31,541
NH	0.4145	43,523	19,742	43,116	19,557
MA	6.7167	705,254	319,901	698,660	316,907
RI	6.8081	714,851	324,254	708,168	321,220
CT	1.2663	132,962	60,311	131,719	59,747
NY	10.3851	1,090,436	494,619	1,080,242	489,990
NJ	14.8162	1,555,701	705,661	1,541,158	699,058
DE	1.8782	197,211	89,454	195,367	88,617
MD	3.0018	315,189	142,969	312,242	141,631
VA	11.8795	1,247,348	565,793	1,235,687	560,498
NC	32.0608	3,366,384	1,526,982	3,334,913	1,512,691
SC	0.0352	3,696	1,676	3,661	1,661
GA	0.0095	998	453	988	448
FL	10.0597	1,056,269	479,121	1,046,394	474,636
Total	100.0000	10,500,015	4,762,727	10,401,851	4,744,652

Comments and Responses

One set of comments was received during the comment period on the proposed rule, as follows:

Comment: The commenter opposes the transfer of allocation from the recreational sector to the commercial sector because he believes it is unfair to anglers who endure strict regulations. He believes it fails to reward recreational fishers who do not fully attain their allocation and negates the conservation benefits their underharvest creates.

Response: The poundage transfer provision was included in Amendment 1 to the FMP (Amendment 1) to ensure that commercial landings would not be unnecessarily reduced if the recreational fishery is not expected to attain its harvest limit. The FMP stipulates that such a transfer may be made if the recreational fishery is not projected to land its harvest limit for the upcoming year. Recreational landings from the last several years were much lower than the recreational allocation for 2004, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg). Since the recreational fishery is not projected to land its harvest limit in 2004, this allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). The TAL for 2004 is 31.85 million lb (14.45 million kg). This is consistent with an F of 0.184 which is actually less than the maximum level of F of 0.310 specified in the FMP as the rebuilding target for 2004. A commercial harvest of 10.5 million lb (4.76 million kg) does not result in overfishing based on the

overfishing definition in the FMP. Overfishing occurs when F is greater than Fmsy = 0.310 (the F that produces maximum sustainable yield). Since the stock condition is improving, and the overall TAL maintains a very low F, there is no reason to reduce allowed landings by the commercial sector. The transfer is not constraining to recreational fishermen, since the remaining recreational harvest limit is more than double the average recreational landings over the last several years.

Comment: The commenter believes that the proposed rule is not written in plain English since most readers would not know what F represents.

Response: F is defined as "fishing mortality rate" in the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The National Marine Fisheries Service (NMFS), pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a final regulatory flexibility analysis (FRFA) in support of the 2004 bluefish specifications. The FRFA describes the economic impact that this final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the initial regulatory flexibility analysis (IRFA) summary found in the Classification section of the proposed rule, the comments on, and responses to the proposed rule, and the corresponding economic analyses prepared by Council for these specifications. For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR and the EA are available from NMFS, Northeast Regional Office and on the Northeast Regional Office Website (see **ADDRESSES**). A description of the reasons why this action is being considered, and the objectives of, and legal basis for, the final rule is found in the preamble to the final rule and is not repeated here.

One set of comments was submitted on the proposed rule, but it was not specific to the IRFA or the economic impact of the rule. NMFS has responded to the comment in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

An active participant in the commercial bluefish fishery sector is defined as being any vessel that reported having landed one or more pounds of bluefish to NMFS-permitted dealers during calendar year 2002. Vessels fishing for bluefish with a Federal permit intending to sell their catch must do so to NMFS-permitted dealers. All vessels affected by this rulemaking have gross receipts less than $3.5 million and are considered to be small entities under the RFA. Since there are no large entities participating in this fishery, there are no disproportionate effects resulting from small versus large entities. Since costs are not readily available, vessel profitability cannot be determined directly. Therefore, changes in gross revenue were used as a proxy for profitability. Of the active, Federally-permitted vessels in 2002, 928 landed bluefish from Maine to North Carolina. Dealer data do not cover vessel activity from South Carolina to Florida. South Atlantic Trip Ticket Report data indicate that 1,004 vessels landed bluefish in North Carolina, including those with Federal permits and those fishing only in state waters. These data also indicate that bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings. Therefore, it was assumed that no vessels landed bluefish from those states. According to South Atlantic Trip Ticket Report data, 101 commercial vessels landed bluefish to dealers on Florida's east coast in 2002.

In addition, in 2002, approximately 2,063 party/charter vessels caught bluefish in either state or Federal waters. All of these vessels are considered small entities under the RFA having gross receipts of less than $5 million annually. Since the possession limits would remain at 15 fish per person, there should be no impact on demand for party/charter vessel fishing, and therefore, no impact on revenues earned by party/charter vessels.

There are no recordkeeping, reporting, or other compliance requirements associated with these final specifications that would increase costs and negatively impact profitability of vessels prosecuting the bluefish fishery. In addition, none of the alternatives to these final specifications would further mitigate the economic impacts to vessels prosecuting the fishery. Therefore, there are no opportunities for vessels to further increase profits from implementation of alternatives other than those published as part of this rule.

The Council analyzed three alternatives. The TAL recommendation and RSA are unchanged in the alternatives, as the TAL is the level that would achieve the target F in 2004, and the RSA is the amount allocated through the grants process. The difference between the preferred alternative (Alternative 1) and Alternatives 2 and 3, therefore, relates only to the manner in which the overall TAL is allocated between the commercial and recreational components of the bluefish fishery. Under Alternative 1, the commercial quota allocation is 10.401 million lb (4.718 million kg), with a recreational harvest limit of 21.150 million lb (9.68 million kg). Under Alternative 2, the commercial quota allocation is 5.363 million lb (2.433 million kg) with a recreational harvest limit of 26.188 million lb (11.878 million kg). Under Alternative 3, the commercial quota allocation is 9.493 million lb (4.346 million kg) with a recreational harvest limit of 22.058 million lb (10.100 million kg).

The preferred commercial quota represents a less than 1–percent decrease from the 2003 commercial quota, with the decrease due to the amount specified for the RSA. The 2004 recreational harvest limit would be 21 percent lower than the recreational harvest limit specified for 2003. However, the recreational harvest limit would still be about twice the recreational landings for 2002. Bluefish landings for the 2000–2002 period ranged from 29 to 59 percent lower than the recreational harvest limits specified in those years, and a projection based on preliminary recreational data for 2003 indicates that landings will be 46 percent lower than the recreational harvest limit specified for 2003. Therefore, under this alternative, no vessels would realize significant revenue reductions. A total of 928 vessels were projected to incur revenue losses as a result of the proposed commercial quota allocation, with 95 percent of those estimated to incur losses of less than 1 percent, and none to incur losses greater than 5 percent. The affected entities would be mostly smaller vessels that land bluefish in Massachusetts, New Jersey, New York and North Carolina. In addition, economic analysis of South Atlantic Trip Ticket Report data indicated that, on average, the slight reduction in the commercial quota from 2003 to 2004 would be expected to result in small reductions in revenue for fishermen that land bluefish in North Carolina (0.05 percent) and Florida (0.03 percent).

The allocations specified in Alternative 2 represent a 49–percent decrease in the commercial quota from the 2003 commercial quota, and a 2–percent decrease in the recreational harvest limit from the 2003 recreational harvest limit. The 2004 recreational harvest limit would be more than twice the 2003 projected recreational

landings. The reduction in the commercial quota would cause 15 vessels to have revenue losses of 50 percent or more, while 123 would have revenue losses from 5 to 49 percent. An additional 790 vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicates an average of 4.43 and 0.03–percent reductions in revenue for fishermen that land bluefish in North Carolina and Florida, respectively.

Alternative 3 represents a 9–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2004. The 2004 recreational harvest limit would be 17 percent lower than the estimated recreational landings in 2003. Under this scenario, a total of 53 vessels would incur revenue losses from 5 to 19 percent due to the reduction in the commercial quota. An additional 875 commercial vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicate reduction in revenues of 0.82 and 0.05–percent for fishermen that land bluefish in North Carolina and Florida, respectively.

The Council further analyzed the impacts on revenues of the proposed RSA specified in all three alternatives. The social and economic impacts of this proposed RSA are expected to be minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as $101,235 dockside, based on a 2002 price of $0.34 per pound for bluefish. Assuming an equal reduction among all 928 active dealer reported vessels, this could mean a reduction of about $109 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than 1 percent decrease), if 2 percent of the TAL is used for research. It is unlikely that there would be negative impacts. A copy of this analysis is available from the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–18050 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 151
Friday, August 6, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18784; Directorate Identifier 2004–NM–59–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, –400F; 767–200, –300, –300F; and 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–400, –400D, –400F; 767–200, –300, –300F; and 777–200 and –300 series airplanes. This proposed AD would require installing a jumper wire between the wiring of the fire extinguisher switch and the fuel shutoff switch for each engine, and other specified actions. This proposed AD is prompted by a certain combination of conditions, which could cause the fuel spar shutoff valves to remain partially open. We are proposing this AD to prevent a latent open circuit that could leave the fuel spar shutoff valve in a partially open position when the engine fire switch is activated, which could result in fuel from the engine feeding an uncontrolled fire in the engine or the strut.

DATES: We must receive comments on this proposed AD by September 20, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6498; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18784; Directorate Identifier 2004–NM–59–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that a certain combination of conditions could cause the fuel spar shutoff valves to remain partially open, potentially contributing to a fire fed by engine fuel at the engine or strut. The engine fire procedure requires the pilot to set the engine fuel control switch to the cutoff position and then activate the engine fire switch. These actions transfer power required to close the fuel spar shutoff valves between the wires connecting the fuel control switch and the engine fire switch. During an engine fire, the wire connected to the engine fire switch

could have a latent open circuit that could leave the fuel spar shutoff valve in a partially open position when the engine fire switch is activated. This condition, if not corrected, could result in fuel from the engine feeding an uncontrolled fire in the engine or the strut.

Relevant Service Information

We have reviewed the following Boeing Special Attention Service Bulletins, which describe procedures for installing a jumper wire between the wiring of the fire extinguisher switch and the fuel shutoff switch for each engine, and other specified actions:

- 747–28–2238 (for Model 747–400, –400D, and –400F series airplanes), dated October 18, 2001.
- 767–28–0066 (for Model 767–200, –300, and –300F series airplanes), Revision 1, dated May 29, 2003.
- 777–28–0025 (for Model 777–200 and –300 series airplanes), dated January 10, 2002.

The other specified actions include testing the electrical connections after installing the jumper wires, and operational testing of the fuel spar shutoff valves.

Accomplishing the actions specified in the service information is intended to adequately address the identified unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require installing a jumper wire between the wiring of the fire extinguisher switch and the fuel shutoff switch for each engine, and other specified actions. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and Service Information."

Differences Between the Proposed AD and Service Information

The service bulletins do not include a compliance time for installing the jumper wire; however, the manufacturer recommends a compliance time of 60 months, with which we concur. Paragraph (f) of this proposed AD requires installing the jumper wire within 60 months after the effective date of the AD.

Costs of Compliance

This proposed AD would affect about 1,882 airplanes worldwide. We estimate that 579 airplanes of U.S. registry would be affected by this proposed AD. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action model series	Work hours	Average labor rate per hour	Parts	Cost per airplane
Installation				
747–400, –400D, –400F	4	$65	$1,450	$1,710
Test				
747–400, –400D, –400F	2	65	None	130
Installation				
767–200, –300, –300F	4	65	500	760
Test				
767–200, –300, –300F	2	65	None	130
Installation				
777–200, –300	4	65	220	480
Test				
777–200, –300	2	65	None	130

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18784; Directorate Identifier 2004–NM–59–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 20, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400, –400D, and –400F series airplanes, line numbers 1 through 1276 inclusive; 767–200, –300, and –300F series airplanes, line numbers 1 through 850 inclusive; and 777–200 and –300 series airplanes, line numbers

1 through 360 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a certain combination of conditions, which could cause the fuel spar shutoff valves to remain partially open. We are issuing this AD to prevent a latent open circuit that could leave the fuel spar shutoff valve in a partially open position when the engine fire switch is activated, which could result in fuel from the engine feeding an uncontrolled fire in the engine or the strut.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation of Jumper Wire

(f) Within 60 months after the effective date of this AD: Install a jumper wire between the wiring of the fire extinguisher switch and the fuel shutoff switch for each engine, and do all other specified actions in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–28–2238 (for Model 747–400, –400D, and –400F series airplanes), dated October 18, 2001; 767–28–0066 (for Model 767–200, –300, and –300F series airplanes), Revision 1, dated May 29, 2003; or 777–28–0025 (for Model 777–200 and –300 series airplanes), dated January 10, 2002; as applicable.

Credit for Actions Accomplished Previously

(g) Accomplishment of the actions required by paragraph (f) before the effective date of this AD, in accordance with Boeing Special Attention Service Bulletin 747–28–2238, dated October 18, 2001; 767–28–0066, Revision 1, dated May 29, 2003; or 777–28–0025, dated January 10, 2002; as applicable; is considered acceptable for compliance with the corresponding action of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on July 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17985 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18786; Directorate Identifier 2004–NM–26–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –300F series airplanes. This proposed AD would require repetitive high frequency eddy current inspections and detailed inspections of the left and right butt line (BL) 25 vertical chords for cracks, and corrective actions if necessary. This proposed AD is prompted by findings of cracks in the fillet radii of the left and right BL 25 vertical chords common to the nose wheel well bulkhead at station 287. We are proposing this AD to detect and correct cracks in the left and right BL 25 vertical chords, which could grow downward into a critical area that serves as a primary load path for the nose landing gear (NLG) and result in the collapse of the NLG during landing.

DATES: We must receive comments on this proposed AD by September 20, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* 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.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18786; Directorate Identifier 2004–NM–26–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents.

We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report of two operators finding cracks in the fillet radii of the left and right butt line (BL) 25 vertical chords, common to the nose wheel well bulkhead at station 287, on several Boeing Model 767–300 series airplanes. Stress corrosion was determined to have caused the cracks. This condition, if not corrected, could grow downward into a critical area that serves as a primary load path for the nose landing gear (NLG) and result in the collapse of the NLG during landing.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–53A0113, dated February 26, 2004. The service bulletin describes procedures for repetitive high frequency eddy current inspections (HFEC) and detailed inspections of the left and right BL 25 vertical chords common to the nose wheel well bulkhead at station 287 for cracks, and corrective actions if necessary. The corrective action includes repairing any damaged BL 25 vertical chord or contacting the manufacturer for repair instructions, as applicable. We have determined that accomplishment of the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive HFEC inspections and detailed inspections of the left and right BL 25 vertical chords common to the nose wheel well bulkhead at station 287 for cracks, and corrective actions if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Difference Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

The service bulletin specifies that you may contact the manufacturer for instructions on repairing certain conditions. This proposed AD, however, would require you to repair those conditions using a method approved by the FAA, or with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the service bulletin is referred to as a "detailed inspection." We have included the definition for a detailed inspection in a note in this proposed AD.

Clarification Between Proposed Rule and the Service Bulletin

The service bulletin specifies a compliance time of 6 years in service, or within 18 months from the release date of the service bulletin. However, paragraph (g) of this proposed AD specifies the compliance time as the later of the following: (1) within 72 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, or (2) within 18 months after the effective date of this AD. This decision is based on our determination that "years in service" may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

Costs of Compliance

This proposed AD would affect about 743 airplanes worldwide and 312 airplanes of U.S. registry. The proposed actions would take about 8 work hours per airplane, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $162,240, or $520 per airplane, per inspection cycle.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18786; Directorate Identifier 2004–NM–26–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 20, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category; as listed in Boeing Alert Service Bulletin 767–53A0113, dated February 26, 2004.

Unsafe Condition

(d) This AD was prompted by findings of cracks in the fillet radii of the left and right

butt line (BL) 25 vertical chords common to the nose wheel well bulkhead at station 287. We are issuing this AD to detect and correct cracks in the left and right BL 25 vertical chords, which could grow downward into a critical area that serves as a primary load path for the nose landing gear (NLG) and result in the collapse of the NLG during landing.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0113, dated February 26, 2004.

Initial Inspections

(g) At the later of the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a high frequency eddy current inspection and a detailed inspection of the left and right BL 25 vertical chords common to the nose wheel well bulkhead at station 287 for cracks, in accordance with the service bulletin.

(1) Within 72 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness.

(2) Within 18 months after the effective date of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, *etc.*, may be necessary. Surface cleaning and elaborate procedures may be required."

No Cracks Found

(h) For any BL 25 vertical chord in which no crack is found during any inspection required by paragraph (g) of this AD: Thereafter at intervals not to exceed 48 months, repeat the inspections required by paragraph (g) of this AD for any BL 25 vertical chord that has not been repaired according to paragraph (i) or (j) of this AD.

Cracks Found: Extending Below Water Line (WL) 159

(i) If any crack is found on any BL 25 vertical chord during any inspection required by paragraph (g) or (h) of this AD, and the crack extends below WL 159: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Cracks Found: Not Extending Below WL 159

(j) If any crack is found in any BL 25 vertical chord during any inspection required by paragraph (g) or (h) of this AD, and the crack does not extend below WL 159: Before further flight, repair any damaged BL 25 vertical chord in accordance with the service bulletin.

Repaired BL 25 Vertical Chords

(k) Repair of any BL 25 vertical chord in accordance with paragraph (i) or (j) of this AD, as applicable, terminates the repetitive inspections required by paragraph (h) of this AD for the repaired vertical chord only. If both the left and right BL 25 vertical chords are repaired as required by paragraph (i) or (j) of this AD, as applicable, no more work is required by this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Issued in Renton, Washington, on July 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17986 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18787; Directorate Identifier 2003–NM–264–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposed AD would require a one-time high-frequency eddy current inspection for cracking of the attachment lugs of the aileron spring tab balance unit, and corrective actions if necessary. This proposed AD is prompted by a report indicating that, during heavy turbulence, a pilot needed to apply aileron trim to maintain level flight because cracking of the upper inboard attachment lug of the aileron spring tab balance unit, probably due to corrosion, had caused permanent deflection of the spring tab and consequent aileron damage. We are proposing this AD to prevent diminished control of the airplane in turbulence or total loss of roll control for the affected wing.

DATES: We must receive comments on this proposed AD by September 7, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand delivery:* 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.

You can get the service information identified in this proposed AD from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the

form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18787; Directorate Identifier 2003–NM–264–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Civil Aviation Authority–The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The CAA–NL advises that it received a report indicating that, during heavy turbulence, a pilot needed to apply aileron trim to maintain level flight because of cracking of the upper inboard attachment lug of the aileron spring tab balance unit, probably due to corrosion, which caused permanent deflection of the spring tab and consequent aileron damage. This condition, if not corrected, could result in diminished control of the airplane in turbulence or total loss of roll control for the affected wing.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F27/27–137, dated March 19, 2003. The service bulletin describes procedures for a one-time high-frequency eddy current inspection of the attachment lugs of the aileron spring tab balance unit (including any removal of loose paint and/or corrosion); reworking of the balance unit attachment lugs; and replacement of the balance unit, if necessary. We have determined that accomplishing the actions specified in the service information will adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive 2003–037, dated March 31, 2003, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require a one-time high-frequency eddy current inspection of the attachment lugs of the aileron spring tab balance unit, with any needed removal of loose paint and/or corrosion, reworking of the balance unit attachment lugs, and replacement of the balance unit, if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

Although the referenced service bulletin describes procedures for reporting certain information to Fokker Services B.V., this proposed AD would not require that action. We do not need this information from operators.

Although the referenced service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, this proposed AD would require you to repair those conditions using a method that we or the CAA–NL (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the CAA–NL approve would be acceptable for compliance with this proposed AD.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Costs of Compliance

This proposed AD would affect about 38 airplanes of U.S. registry. The proposed actions would take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $12,350, or $325 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Fokker Services B.V.: Docket No. FAA–2004–18787; Directorate Identifier 2003–NM–264–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by September 7, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that, during heavy turbulence, a pilot needed to apply aileron trim to maintain level flight because cracking of the upper inboard attachment lug of the aileron spring tab balance unit, probably due to corrosion, had caused permanent deflection of the spring tab and consequent aileron damage. We are issuing this AD to prevent diminished control of the airplane in turbulence or total loss of roll control for the affected wing.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Within 24 months after the effective date of this AD, perform a one-time high-frequency eddy current inspection for cracking of the attachment lugs of the aileron spring tab balance units by doing all the actions in the Accomplishment Instructions of Fokker Service Bulletin F27/27–137, dated March 19, 2003. If no loose paint, corrosion damage, or crack is found during this inspection, no further action is required by this AD.

Repair and Rework of Attachment Lugs

(g) If no crack is found during the inspection required by paragraph (f) of this AD, but it was necessary to remove loose paint or corrosion to perform the inspection: Prior to further flight, rework the attachment lugs in accordance with the Accomplishment Instructions of Fokker Service Bulletin F27/27–137, dated March 19, 2003. If corrosion damage has caused any attachment lug to exceed the dimensional limits specified in the service bulletin: Prior to further flight, replace the aileron spring tab balance unit with a serviceable unit, in accordance with the Accomplishment Instructions of Fokker Service Bulletin F27/27–137, dated March 19, 2003, or repair the lug in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority–The Netherlands (CAA–NL) (or its delegated agent).

Replacement

(h) If any crack is found during the inspection required by paragraph (f) of this AD: Prior to further flight, replace the aileron spring tab balance unit with a serviceable unit, in accordance with the Accomplishment Instructions of Fokker Service Bulletin F27/27–137, dated March 19, 2003.

No Reporting Requirement

(i) Although Fokker Service Bulletin F27/27–137, dated March 19, 2003, specifies to submit certain information to Fokker Services B.V., this AD does not include such a requirement.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(k) Dutch airworthiness directive 2003–037, dated March 31, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on July 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17987 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18788; Directorate Identifier 2003–NM–203–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections of the intercostal webs, attachment clips, and stringer splice channels for cracks; and corrective action if necessary. This proposed AD is prompted by reports of fatigue cracks on several Boeing Model 737–200 series airplanes. We are proposing this AD to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door, which could result in loss of the forward entry door and rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by September 20, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department

of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6430; fax (425) 917–6590.

Plain Language Information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18788; Directorate Identifier 2003–NM–203–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that eleven operators have found fatigue cracks in the intercostal web at body station (BS) 358.5 and stringer (S) S–16L on several Boeing Model 737–200 series airplanes. The cracks extended from the inboard edge of the intercostal through tooling or fastener holes and terminated at the two-inch diameter lightening hole. Three operators have also reported four airplanes with cracks in the intercostals at S–11L, S–12L, and S–13L on the forward and aft sides of the forward entry door. All additional cracks are in the radius of return flanges of the webs and attachment clips. One operator has reported one airplane with cracks in the stringer splice channels at S–14L and S–15L on the aft side of the forward entry door. The cracks were in the intercostal web attachment flange at the aft end of the intercostal. Such fatigue cracking, if not detected and corrected in a timely manner, could result in loss of the forward entry door and rapid decompression of the airplane.

The intercostal webs, attachment clips, and stringer splice channels on certain Boeing Model 737–100, –200C, –300, –400, and –500 series airplanes are identical to those on the affected Boeing Model 737–200 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003. The service bulletin describes procedures for detailed and high frequency eddy current inspections (as applicable) of the intercostal webs, attachment clips, and stringer splice channels for cracks; and corrective actions if necessary. The corrective actions include repairing cracks and contacting Boeing for certain repair instructions.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive inspections of the intercostal webs, attachment clips, and stringer splice channels for cracks; and corrective action if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The service bulletin specifies to repair any crack found at the S–16L intercostal (BS 348.2–360) on Boeing Model 737–400 series airplanes per 737–400 Structural Repair Manual (SRM) 53–10–04, Figure 202. Figure 202 does not exist; the correct figure is 737–400 SRM 53–10–04, Figure 201. Note 2 of this proposed AD points out this error in the service bulletin.

Paragraphs 3. and 4. of the "Part 1 for Group 1 passenger airplanes" section of the Work Instructions of the service bulletin do not give instructions for repairing cracks found in the attachment clip or stringer splice channel during the inspections. Other paragraphs of the service bulletin give instructions for similar attachment clips and stringer splice channels. This proposed AD would require operators to contact the FAA or an FAA-authorized Boeing Delegated Engineer Representative (DER) for repair instructions and do the repair before further flight if any crack is found in the attachment clip or stringer splice channel during the inspections specified in "Part 1 for Group 1 passenger airplanes." If no crack is found in the attachment clip or

stringer splice channel during the inspections, this proposed AD would require the repetitive inspections.

The differences discussed above have been coordinated with Boeing.

Costs of Compliance

This proposed AD would affect about 3,113 airplanes worldwide and 876 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $113,880, or $130 per airplane, per inspection cycle.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18788; Directorate Identifier 2003–NM–203–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 20, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as listed in Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of fatigue cracks on several Boeing Model 737–200 series airplanes. We are issuing this AD to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door, which could result in loss of the forward entry door and rapid decompression of the airplane

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Definition

(f) The term "service bulletin," as used in this AD, means Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003.

Initial Compliance Time

(g) Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later: Do the inspections specified in paragraph (h) or (i) of this AD, as applicable.

Inspection for Passenger Configuration Airplanes

(h) For Group 1 passenger airplanes identified in the service bulletin: Perform a detailed inspection of the intercostal web, attachment clips, and stringer splice channels for cracks; and a high frequency eddy current inspection of the stringer splice channels, located forward and aft of the forward entry door, for cracks; per Parts 1 and 2 of the Work Instructions of the service bulletin.

Inspection for Cargo Configuration Airplanes

(i) For Group 2 cargo airplanes identified in the service bulletin: Perform a detailed inspection of the intercostal webs and attachment clips located forward of the forward entry door for cracks, per Part 3 of the Work Instructions of the service bulletin.

Repetitive Inspections

(j) If no crack is found during any inspection required by paragraph (h) or (i) of this AD, repeat the inspections at the applicable time specified in Table 1 of this AD, except as provided by paragraph (k) of this AD.

TABLE 1.—REPETITIVE INSPECTION INTERVAL

Airplane group number in Service Bulletin	For intercostal location—	Repeat inspections at intervals not to exceed—
Group 1	S–16L, from BS 348.2 to BS 360 (aft of door)	4,500 flight cycles.
Group 1	S–7L through S–15L, from BS 348.2 to BS 360 (aft of door)	25,000 flight cycles.
Group 1 and 2	S–7L through S–16L, from BS 294.5 to BS 303.9 (forward of door)	25,000 flight cycles.

Deferral of Certain Repetitive Inspections

(k) For intercostal webs at S–16L from BS 348.2 to BS 360: Installation of the repair as a preventative modification or corrective action per Part 1 of the Work Instructions of the service bulletin defers the repetitive inspections to intervals not to exceed 25,000 flight cycles. Use 737–400 SRM 53–10–04, Figure 201 instead of Figure 202, as applicable.

Corrective Actions

(l) If any crack is found during any inspection required by paragraph (h) or (i) of this AD, perform the actions specified in paragraphs (l)(1) through (l)(3) of Table 2 of this AD, as applicable. Repeat the inspections at the applicable time specified in Table 1 of this AD, except as provided by paragraph (k) of this AD.

TABLE 2.—CORRECTIVE ACTIONS

During any inspection specified in—	If any crack is found in—	At intercostal location—	Before further flight—
(1) Part 1 of the Work Instructions of the service bulletin.	(i) The intercostal web	Stringer (S)–16L, from body station (BS) 348.2 to BS 360 (aft of door).	Repair per Part 1 of the the Work Instructions of the service bulletin, except where the service bulletin specifies to contact Boeing for repair instructions, before further flight, do the repair specified in paragraph (m) of this AD. Use 737–400 Structural Repair Manual (SRM) 53–10–04, Figure 201 instead of Figure 202, as applicable (see note 2).
	(ii) An attachment clip or stringer splice channel.	S–16L, from BS 348.2 to BS 360 (aft of door).	Do the repair specified in paragraph (m) of this AD.
(2) Part 2 of the Work Instructions of the service bulletin.	An intercostal web, attachment clip, or stringer splice channel.	S–7L through S–16L, from BS 294.5 to BS 303.9 (forward of door); and S–7L through S–15L, from BS 348.2 to BS 360 (aft of door).	Do the repair specified in paragraph (m) of this AD.
(3) Part 3 of the Work Instructions of the service bulletin.	An intercostal web or attachment clip.	S–7L through S–16L, from BS 294.5 to BS 303.9 (forward of door).	Do the repair specified in paragraph (m) of this AD.

Note 2: The service bulletin specifies to repair any crack found at the S–16L intercostal (BS 348.2–360) on Boeing Model 737–400 series airplanes per 737–400 SRM 53–10–04, Figure 202. Figure 202 does not exist; the correct figure is 737–400 SRM 53–10–04, Figure 201.

Repair

(m) At the time specified in Table 2 of this AD, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for corrective actions, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings.

Issued in Renton, Washington, on July 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17988 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18728; Directorate Identifier 2003–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–400 and –400F series airplanes. This proposed AD would require a detailed inspection(s) for cracks and fractures of the side guide support fittings in the lower lobe cargo compartments; and applicable investigative/corrective actions and operational limitations, if necessary. This proposed AD also would require a terminating action for the repetitive inspections. This proposed AD is prompted by reports of cracked/fractured side guide support fittings in the aft, lower lobe cargo compartment. We are proposing this AD to prevent cracked/fractured side guide support fittings in the lower lobe cargo compartments, which could result in unrestrained cargo shifting in flight and damaging the airplane structure or systems, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by September 20, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* 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.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18728; Directorate Identifier 2003–NM–176–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received two reports indicating that cracked/fractured side guide support fittings were found in the aft, lower lobe cargo compartment on Boeing Model 747–400F series airplanes that had been in service less than 16 months. One airplane had a total of 16 cracked/fractured side guide support fittings and the other airplane had 4. The side guide support fittings provide lateral and vertical restraint for cargo in the lower lobe cargo compartments.

Investigation revealed that failed roller assemblies in the outboard roller trays caused the conveyor plane of the unit load device (ULD) to drop and allowed the ULD to impact the side guide support fittings. Repeated impacts by the ULD can result in fatigue and consequent cracked/fractured side guide support fittings. The roller assembly failures were caused by a manufacturing defect in the bearings that resulted in the separation of the bearing's inner and outer race.

Cracked/fractured side guide support fittings in the lower lobe cargo compartments, if not corrected, could result in unrestrained cargo shifting in flight and damaging the airplane structure or systems and consequent reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–25A3335, dated July 3, 2003. The service bulletin describes procedures for a detailed inspection(s) for cracks and fractures of the side guide support fittings in the lower lobe cargo compartments, and applicable investigative/corrective actions and operational limitations, if necessary. The applicable investigative actions include a general visual inspection of the cargo compartment for damage, and repair if necessary. The corrective actions include replacing cracked or fractured side guide support fittings with new fittings; and replacing all outboard roller assemblies with new assemblies, which would eliminate the need for repetitive detailed inspections. The service bulletin also describes operational limitations for missing restraints until replacement of cracked or fractured side guide support fittings. We have determined that accomplishing of the actions specified in the service bulletin will adequately address the unsafe condition.

Boeing Alert Service Bulletin 747–25A3335 refers to Goodrich Alert Service Bulletin 65B60176–25–A01, dated March 3, 2003, as an additional source of service information for doing the replacement of the outboard roller assemblies.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require a detailed inspection(s) of the side guide support fittings in the lower lobe cargo compartments for cracks and fractures; and applicable investigative/corrective actions and operational limitations, if necessary. This proposed AD also would require a terminating action for the repetitive inspections. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Difference Between the Proposed AD and Service Bulletin."

Difference Between the Proposed AD and Service Bulletin

Figures 1 and 2 of the referenced Boeing service bulletin specify a general visual inspection of the cargo compartment for damage, and repair if necessary. We have determined that those actions are not necessary to adequately address the identified unsafe condition of this AD. Therefore, this proposed AD would not require operators to do that inspection and repair.

Costs of Compliance

This proposed AD would affect about 22 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle	5	$65	None	$325*	3	$975*
Assembly replacement	25	$65	$3,402	$5,027	3	$15,081

*Per inspection cycle.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18728; Directorate Identifier 2003–NM–176–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 20, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Boeing Model 747–400 and "400F series airplanes, certificated in any category; as listed in Boeing Alert Service Bulletin 747–25A3335, dated July 3, 2003.

Unsafe Condition

(d) This AD was prompted by reports of cracked/fractured side guide support fittings in the aft, lower lobe cargo compartment. We are issuing this AD to prevent cracked/fractured side guide support fittings in the lower lobe cargo compartments, which could result in unrestrained cargo shifting in flight and damaging the airplane structure or systems, and consequent reduced controllability of the airplane.

Compliance: (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection, Investigative/Corrective Actions, and Operational Limitations

(f) At the applicable time(s) specified in Table 1 of this AD, do a detailed inspection(s) of the side guide support fittings in the lower lobe cargo compartments for cracks and fractures, and before further flight, do all applicable investigative/corrective actions and operational limitations, if necessary, by accomplishing all the actions specified in Work Package 1 and Work Package 2 of the Work Instructions of Boeing Alert Service Bulletin 747–25A3335, dated July 3, 2003; except as required by paragraph (g) of this AD. Replacement of all outboard roller assemblies with new assemblies in accordance with Work Package 2 of the service bulletin ends the repetitive inspections required by paragraph (f)(1) of this AD (Work Package 1).

TABLE 1.—COMPLIANCE TIMES

For—	Initial compliance time—	Repetitive interval—
(1) Work Package 1	Within 180 days after the effective date of this AD.	At intervals not to exceed 180 days, until all outboard roller assemblies have been replaced per Work Package 2 of the service bulletin.
(2) Work Package 2	Within 18 months after the effective date of this AD.	None.

Note 1: For the purposes of this AD, a detailed inspection is "an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required."

Note 2: Boeing Alert Service Bulletin 747–25A3335 refers to Goodrich Alert Service Bulletin 65B60176–25–A01, dated March 3, 2003, as an additional source of service information for replacing the outboard roller assemblies.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on July 29, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17989 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18729; Directorate Identifier 2004–NM–24–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 and –200B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100 and –200B series airplanes. This proposed AD would require installing bonding clips and bonding jumpers from the housing of each fuel pump to airplane structure outside the fuel tanks. This proposed AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are proposing this AD to ensure adequate electrical bonding between the housing of each fuel pump and airplane structure outside the fuel tanks. Inadequate electrical bonding, in the event of a lightning strike or pump electrical fault, could cause electrical arcing and ignition of fuel vapor in the wing fuel tank, which could result in a fuel tank explosion.

DATES: We must receive comments on this proposed AD by September 20, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6499; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18729; Directorate Identifier 2004–NM–24–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions

associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

Based on this process, we have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

As a result of fuel system reviews associated with SFAR 88, the airplane manufacturer determined that the electrical bonding at the interface of the housings for the main fuel pumps and the fuel tanks is not adequate on certain Boeing Model 747–100 and –200B series airplanes. The eight main fuel boost pumps currently rely on a bolted connection to provide the required low electrical resistance between the pump housing and the fuel tank structure. However, on the affected airplanes, a special corrosion protection finish used on the fuel tank acts as a partial insulator. Given a lightning strike or pump electrical fault, arcing can occur at this existing interface, which is inside the fuel tank. This condition, if not corrected, could result in ignition of fuel vapor in the fuel tanks, which could result in a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–28A2033, Revision 1, dated December 18, 2003, which is divided into two parts. Part 1 of the service bulletin describes procedures for installing bonding clips and bonding jumpers from the housing of each fuel pump to airplane structure outside the fuel tanks, including installing "caution" markers next to each pump, and measuring the resistance between the mounting flanges of each fuel pump and the airplane structure. Part 2 of the service bulletin is optional and describes procedures for removing existing bonding jumpers from the housing of each fuel pump, and applying a corrosion resistant finish. Accomplishing the actions specified in Part 1 of the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require installing bonding clips and bonding jumpers from the housing of each fuel pump to airplane structure outside the fuel tanks. The proposed AD would require you to use Part 1 of the service information described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 158 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation of Bonding Clips/Jumpers	8	$65	$0	$520	23	$11,960

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18729; Directorate Identifier 2004–NM–24–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 20, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Boeing Model 747–100 and -200B series airplanes having line numbers 1 through 167 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure adequate electrical bonding between the housing of each fuel pump and airplane structure outside the fuel tanks. Inadequate electrical bonding, in the event of a lightning strike or pump electrical fault, could cause electrical arcing and ignition of fuel vapor in the wing fuel tank, which could result in a fuel tank explosion.

Compliance: (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation of Bonding Clips and Bonding Jumpers

(f) Within 60 months after the effective date of this AD, install bonding clips and bonding jumpers from the housing of each fuel pump to airplane structure located

outside the fuel tanks by doing all of the actions in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–28A2033, Revision 1, dated December 18, 2003.

Actions Done in Accordance With Previous Service Bulletin Revision

(g) Installations done before the effective date of this AD in accordance with Boeing Service Bulletin 747–28–2033, dated December 15, 1971, are acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on July 29, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17990 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208254–90 and REG–136481–04]

RIN 1545–AO72 and RIN 1545–BD62

Source of Compensation for Labor or Personal Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document contains new proposed rules that describe the proper basis for determining the source of compensation from labor or personal services performed partly within and partly without the United States. The new proposed rules will affect individuals that earn compensation from labor or personal services performed partly within and partly without the United States and are needed to provide appropriate guidance regarding the determination of the proper source of that compensation. This document also withdraws the notice of proposed rulemaking (REG–208254–90) published in the **Federal Register** on January 21, 2000 (65 FR 3401).

DATES: Written or electronic comments and requests for a public hearing must be received by November 4, 2004. The notice of proposed rulemaking published on January 21, 2000, is withdrawn as of August 6, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–208254–90), room 5203, 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–208254–90), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs* or Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–208254–90).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Bergkuist, (202) 622–3850 (not a toll-free number); concerning the submissions of comments, Lanita Van Dyke (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collection of information should be received by October 5, 2004. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.861–4(b)(2)(ii)(C)(*1*)(*i*), (b)(2)(ii)(D), and (b)(2)(ii)(D)(*6*). The information required in § 1.861–4(b)(2)(ii)(C)(*1*)(*i*) will enable an individual, where appropriate, to use an alternative basis other than that described in § 1.861–4(b)(2)(ii)(A) or (B) to determine the source of his or her compensation as an employee for labor or personal services performed partly within and partly without the United States. The information required in § 1.861–4(b)(2)(ii)(D) and (D)(*6*) will enable an employee to source certain fringe benefits on a geographical basis. The collections of information will, likewise, allow the IRS to verify these determinations.

The collections of information and responses to these collections of information are required to obtain and maintain benefits. The likely respondents are individuals who perform labor or personal services partly within and partly without the United States, some of which may receive certain fringe benefit compensation for those services.

Estimated total annual recordkeeping burden: 10,000 hours.

The estimated annual burden per recordkeeper varies from 15 minutes to one hour, depending on the circumstances of the individual, with an estimated average of 30 minutes.

Estimated number of recordkeepers: 20,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed amendments (the new proposed regulations) 26 CFR part 1 under section 861 of the Internal Revenue Code (Code). On January 21, 2000, a notice of proposed rulemaking was published in the **Federal Register** at 65 FR 3401 (REG–208254–90; 2000–1 C.B. 577) (the previously proposed regulations). The previously proposed regulations would have modified the existing final regulations relating to the determination of the source of income from the

performance of labor or personal services performed partly within and partly without the United States. Written comments were received in response to the notice of proposed rulemaking. A public hearing was held on July 18, 2000. In response to these comments, and after further consideration of the issue, the previously proposed regulations are withdrawn and new regulations are proposed. This preamble discusses comments received on the previously proposed regulations and describes the differences between the new proposed regulations and the previously proposed regulations.

Explanation of Provisions

The existing final regulations, § 1.861–4(b), provide that if a person performs labor or personal services partly within and partly without the United States, the amount to be included in gross income from United States sources shall be determined on the basis that most correctly reflects the proper source of income under the facts and circumstances of the particular case.

The previously proposed regulations retained the facts and circumstances basis for determining the source of such income for persons other than individuals. For individuals, however, the previously proposed regulations provided that if an individual received compensation for a specific time period for labor or personal services that are performed partly within and partly without the United States, the amount of compensation for labor or personal services performed within the United States would have been determined solely on a time basis.

Several comments questioned the rule in the previously proposed regulations that required individuals to determine the source of such income on a time basis. In response to those comments, and after further consideration of the issues presented, the previously proposed regulations are withdrawn and new regulations are proposed that take into account the concerns raised.

Treasury and the IRS believe that a time basis generally is the most appropriate method for determining the source of an individual employee's compensation for labor and personal services performed partly within and partly without the United States. Compensation provided to an employee for a specific time period is generally considered to be earned by the employee ratably over that time period. Accordingly, it is appropriate generally to source such compensation on a ratable basis. In addition, Treasury and the IRS believe that this rule will provide certainty and simplification for both taxpayers and the IRS. The information necessary to apply the time basis should be readily available to employers and employees. For example, Form 2555, "Foreign Earned Income", requires an individual who claims the foreign earned income exclusion to provide the IRS with information relating to the number of business days spent within the United States and any fringe benefits received. Sourcing on a time basis may be appropriate as well for individuals other than employees who receive compensation for labor or personal services and who may be viewed as earning such compensation ratably.

Nonetheless, for entities other than individuals and for individuals who are not employees, the facts and circumstances in many cases may be such that an apportionment on a basis other than a time basis may be more appropriate. For example, a corporation could receive payments under a contract for services to be performed by numerous employees at various pay levels in a number of different geographic locations. In such a case, payroll costs under the contract for services, or another basis besides time, may more correctly reflect the proper source of the corporation's income.

The new proposed regulations retain the facts and circumstances basis as the general rule for determining the source of compensation for labor and personal services performed partly within and partly without the United States received by persons other than individuals and by individuals who are not employees. However, the new proposed regulations provide two new general bases for determining the proper source of compensation that an individual receives as an employee for such labor or personal services. Under the first general basis of § 1.861–4(b)(2)(ii)(A), an individual who receives compensation, other than compensation in the form of certain fringe benefits, as an employee for labor or personal services performed partly within and partly without the United States is required to source such compensation on a time basis, as defined in § 1.861–4(b)(2)(ii)(E).

Under the second general basis of § 1.861–4(b)(2)(ii)(B) and (D), an individual who receives compensation as an employee for labor or personal services performed partly within and partly without the United States in the form of fringe benefits, as described in § 1.861–4(b)(2)(ii)(D)(*1*) through (*6*), is required to source such compensation on a geographical basis (*e.g.*, at the employee's principal place of work, as defined in section 217 and § 1.217–2(c)(3)). The fringe benefits to which this general basis applies are: Housing, education, local transportation, tax reimbursement, hazardous or hardship duty pay, and moving expense reimbursement fringe benefits. This general basis will apply only if the amount of the fringe benefit is reasonable and is substantiated by adequate contemporaneous records or sufficient evidence under rules similar to those set forth in § 1.274–5T(c) or (h) or § 1.132–5, and only if the fringe benefit meets the definition set forth in the new proposed regulations. Treasury and the IRS intend to keep the list and descriptions of identified fringe benefits current and invite comments regarding whether the identified fringe benefits are appropriately defined and whether other fringe benefits should be identified in the regulations and sourced on a specific geographic basis.

Treasury and the IRS recognize that there are circumstances in which these two general bases may not be the most appropriate basis for determining the source of an employee's compensation for labor or personal services performed partly within and partly without the United States. Accordingly, the new proposed regulations at § 1.861–4(b)(2)(ii)(C)(*1*)(*i*) provide that an employee may use an alternative basis, based upon the facts and circumstances, to source such compensation if he or she establishes to the satisfaction of the Commissioner that such an alternative basis more properly determines the source of the compensation. For example, when an employee's compensation is tied to the performance of specific actions rather than earned ratably over a specific time period, an alternative basis may more properly determine the source of compensation than the bases for determining source of compensation described in § 1.861–4(b)(2)(ii)(A) and (B).

In order to satisfy the Commissioner, an employee must retain in his or her records documentation setting forth why the alternative basis more properly determines the source of the compensation than the basis for determining source of compensation described in § 1.861–4(b)(2)(ii)(A) or (B). In addition, it is anticipated that the Commissioner, by ruling or other administrative pronouncement, will issue guidance as to what procedures an employee must follow in order to assert an alternative basis to determine the source of his or her compensation for labor or personal services performed partly within and partly without the United States. Such administrative

pronouncement will likely require that an individual who has $250,000 or more in compensation for the tax year must indicate in the manner prescribed that he or she is using an alternative basis to source his or her compensation. Such individual may be required to file a form, or retain the following in his or her records: (1) A written explanation of why the alternative basis more properly determines the source of the compensation than the basis for determining source of compensation described in § 1.861–4(b)(2)(ii)(A) or (B) under the facts and circumstances, and (2) a written comparison of the dollar amount of the compensation sourced within and without the United States under both the individual's alternative basis and the basis for determining source of compensation described in § 1.861–4(b)(2)(ii)(A) or (B).

Section 1.861–4(b)(2)(ii)(C)(*1*)(*ii*) of the new proposed regulations also provides that the Commissioner may, under the facts and circumstances of the particular case, determine the source of compensation that is received by an individual as an employee for labor or personal services performed partly within and partly without the United States under an alternative basis other than a basis described in paragraph (b)(2)(ii)(A) or (B) if such compensation either (1) is not for a specific time period or (2) constitutes in substance a fringe benefit described in paragraph (b)(2)(ii)(D) notwithstanding a failure to meet any requirement of paragraph (b)(2)(ii)(D). The Commissioner may make this determination only if such alternative basis determines the source of compensation in a more reasonable manner than the basis used by the individual pursuant to paragraph (b)(2)(ii)(A) or (B).

Section 1.861–4(b)(2)(ii)(C)(*2*) of the new proposed regulations provides that the Commissioner may, by ruling or other administrative pronouncement applying to similarly situated taxpayers generally, permit individuals to determine the source of their compensation as an employee for labor or personal services performed partly within and partly without the United States under an alternative basis. Any such individual shall be treated as having met the requirement to establish such alternative basis to the satisfaction of the Commissioner under the facts and circumstances of the particular case, provided that the individual meets the other requirements of paragraph (b)(2)(ii)(C)(*1*)(*i*). This paragraph also provides that the Commissioner may, by ruling or other administrative pronouncement, indicate the circumstances in which he will require individuals to determine the source of certain compensation as an employee for labor or personal services performed partly within and partly without the United States under an alternative basis pursuant to the authority under paragraph (b)(2)(ii)(C)(*1*)(*ii*) of this section.

Section 1.861–4(b)(2)(ii)(C)(*3*) of the new proposed regulations is reserved with respect to artists and athletes who are employees. It is intended that the specific rules for artists and athletes who are employees will require such individuals to determine the proper source of compensation for labor or personal services on the basis that most correctly reflects the proper source of that income under the facts and circumstances of the particular case, consistent with current law. Comments are invited in this connection, including on the proper definition of an *artist* or *athlete* for this purpose.

Examples illustrating these new rules with respect to compensation that an individual receives as an employee are included in § 1.861–4(b)(2)(ii)(G) of the new proposed regulations.

Several of the comments to the previously proposed regulations requested specific rules for compensation arrangements that relate to services performed over a period of more than one year, such as employee stock option plans, transfers of restricted property, and other deferred compensation arrangements. The new proposed regulations provide at § 1.861–4(b)(2)(ii)(F) that the source of multi-year compensation of an employee is generally determined on a time basis over the applicable period to which the compensation is attributable. Determination of the applicable period to which the compensation is attributable (including whether the compensation relates to more than one taxable year) is based upon the facts and circumstances of the particular case. Treasury and the IRS invite taxpayers to provide comments on whether alternative bases for determining the source of such multi-year compensation are appropriate.

One comment questioned whether a day was the only time period upon which to apply the time basis of sourcing compensation. In response to this comment, the new proposed regulations provide at § 1.861–4(b)(2)(ii)(E) that, although the time basis is generally determined by comparing the number of days of performance of the labor or personal services by the individual within the United States to his or her total number of days of performance of labor or personal services, use of a unit of time less than a day may be appropriate for purposes of this calculation. For example, it may be more appropriate to source compensation paid to an airline flight crewmember based on a time unit of less than a day.

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 also has been determined that section 553(b) of 5 U.S.C. chapter 5 does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act, 5 U.S.C. chapter 6, does not apply. 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 their impact on small businesses.

Comments and Requests for a Public Hearing

Before the new proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David Bergkuist of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on January 21, 2000, (65 FR 3401), REG–208254–90 is withdrawn.

Proposed 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 1.861–4 is amended as follows:

1. The heading for paragraph (a) is revised.
2. A sentence is added at the beginning of paragraph (a)(1).
3. Paragraph (b) is revised.
4. A sentence is added at the end of paragraph (d).

The revisions and addition read as follows:

§ 1.861–4 Compensation for labor or personal services.

(a) *Compensation for labor or personal services performed wholly within the United States*—(1) Generally, compensation for labor or personal services, including fees, commissions, fringe benefits, and similar items, performed wholly within the United States is gross income from sources within the United States. * * *

* * * * *

(b) *Compensation for labor or personal services performed partly within and partly without the United States*—(1) *Compensation for labor or personal services performed by persons other than individuals*—(i) *In general.* In the case of compensation for labor or personal services performed partly within and partly without the United States by a person other than an individual, the part of that compensation that is attributable to the labor or personal services performed within the United States, and that is therefore included in gross income as income from sources within the United States, is determined on the basis that most correctly reflects the proper source of the income under the facts and circumstances of the particular case. In many cases, the facts and circumstances will be such that an apportionment on the time basis, as defined in paragraph (b)(2)(ii)(E) of this section, will be acceptable.

(ii) *Example.* Corp X, a domestic corporation, receives compensation of $150,000 under a contract for services to be performed concurrently in the United States and in several foreign countries by numerous Corp X employees. Each Corp X employee performing services under this contract performs his or her services exclusively in one jurisdiction. Although the number of employees (and hours spent by employees) performing services under the contract within the United States equals the number of employees (and hours spent by employees) performing services under the contract without the United States, the compensation paid to employees performing services under the contract within the United States is higher because of the more sophisticated nature of the services performed by the employees within the United States. Accordingly, the payroll cost for employees performing services under the contract within the United States is $20,000 out of a total contract payroll cost of $30,000. Under these facts and circumstances, a determination based upon relative payroll costs would be the basis that most correctly reflects the proper source of the income received under the contract. Thus, of the $150,000 of compensation included in Corp X's gross income, $100,000 ($150,000 × $20,000/$30,000) is attributable to the labor or personal services performed within the United States and $50,000 ($150,000 × $10,000/$30,000) is attributable to the labor or personal services performed without the United States.

(2) *Compensation for labor or personal services performed by an individual*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, in the case of compensation for labor or personal services performed partly within and partly without the United States by an individual, the part of such compensation that is attributable to the labor or personal services performed within the United States, and that is therefore included in gross income as income from sources within the United States, is determined on the basis that most correctly reflects the proper source of that income under the facts and circumstances of the particular case. In many cases, the facts and circumstances will be such that an apportionment on a time basis, as defined in paragraph (b)(2)(ii)(E) of this section, will be acceptable.

(ii) *Employee compensation*—(A) *In general.* Except as provided in paragraph (b)(2)(ii)(B) or (C) of this section, in the case of compensation for labor or personal services performed partly within and partly without the United States by an individual as an employee, the part of such compensation that is attributable to the labor or personal services performed within the United States, and that is therefore included in gross income as income from sources within the United States, is determined on a time basis, as defined in paragraph (b)(2)(ii)(E) of this section.

(B) *Certain fringe benefits sourced on a geographical basis.* Except as provided in paragraph (b)(2)(ii)(C) of this section, items of compensation of an individual as an employee for labor or personal services performed partly within and partly without the United States that are described in paragraph (b)(2)(ii)(D)(*1*) through (*6*) of this section are sourced on a geographical basis in accordance with those paragraphs.

(C) *Exceptions and special rules*—(*1*) *Alternative basis*—(*i*) *Individual as an employee generally.* An individual may determine the source of his or her compensation as an employee for labor or personal services performed partly within and partly without the United States under an alternative basis if the individual establishes to the satisfaction of the Commissioner that, under the facts and circumstances of the particular case, the alternative basis more properly determines the source of the compensation than a basis described in paragraph (b)(2)(ii)(A) or (B), whichever is applicable, of this section. An individual that uses an alternative basis must retain in his or her records documentation setting forth why the alternative basis more properly determines the source of the compensation. In addition, the individual must comply with the requirements set forth in any applicable administrative pronouncement issued by the Commissioner.

(*ii*) *Determination by Commissioner.* The Commissioner may, under the facts and circumstances of the particular case, determine the source of compensation that is received by an individual as an employee for labor or personal services performed partly within and partly without the United States under an alternative basis other than a basis described in paragraph (b)(2)(ii)(A) or (B) of this section if such compensation either is not for a specific time period or constitutes in substance a fringe benefit described in paragraph (b)(2)(ii)(D) of this section notwithstanding a failure to meet any requirement of paragraph (b)(2)(ii)(D) of this section. The Commissioner may make this determination only if such alternative basis determines the source of compensation in a more reasonable manner than the basis used by the individual pursuant to paragraph (b)(2)(ii)(A) or (B) of this section.

(*2*) Ruling or other administrative pronouncement with respect to groups of taxpayers. The Commissioner may, by ruling or other administrative pronouncement applying to similarly situated taxpayers generally, permit individuals to determine the source of their compensation as an employee for labor or personal services performed partly within and partly without the United States under an alternative basis. Any such individual shall be treated as having met the requirement to establish

such alternative basis to the satisfaction of the Commissioner under the facts and circumstances of the particular case, provided that the individual meets the other requirements of paragraph (b)(2)(ii)(C)(*1*)(*i*) of this section. The Commissioner also may, by ruling or other administrative pronouncement, indicate the circumstances in which he will require individuals to determine the source of certain compensation as an employee for labor or personal services performed partly within and partly without the United States under an alternative basis pursuant to the authority under paragraph (b)(2)(ii)(C)(*1*)(*ii*) of this section.

(*3*) *Artists and athletes.* [Reserved]

(D) *Fringe benefits sourced on a geographical basis.* Except as provided in paragraph (b)(2)(ii)(C) of this section, compensation of an individual as an employee for labor or personal services performed partly within and partly without the United States in the form of the following fringe benefits is sourced on a geographical basis as indicated in this paragraph (b)(2)(ii)(D). The amount of the compensation in the form of the fringe benefit must be reasonable, and the individual must substantiate such amounts by adequate records or by sufficient evidence under rules similar to those set forth in § 1.274–5T(c) or (h) or § 1.132–5. For purposes of this paragraph (b)(2)(ii)(D), the term *principal place of work* has the same meaning that it has for purposes of section 217 and § 1.217–2(c)(3).

(*1*) *Housing fringe benefit.* The source of compensation in the form of a housing fringe benefit is determined based on the location of the individual's principal place of work. For purposes of this paragraph (b)(2)(ii)(D)(*1*), a housing fringe benefit includes payments to or on behalf of an individual (and the individual's family if the family resides with the individual) only for rent, utilities (other than telephone charges), real and personal property insurance, occupancy taxes not deductible under section 164 or 216(a), nonrefundable fees paid for securing a leasehold, rental of furniture and accessories, household repairs, residential parking, and the fair rental value of housing provided in kind by the individual's employer. A housing fringe benefit does not include payments for expenses or items set forth in § 1.911–4(b)(2).

(*2*) *Education fringe benefit.* The source of compensation in the form of an education fringe benefit for the education expenses of the individual's dependents is determined based on the location of the individual's principal place of work. For purposes of this paragraph (b)(2)(ii)(D)(*2*), an education fringe benefit includes payments only for qualified tuition and related expenses of the type described in section 530(b)(4)(A)(i) and expenditures for room and board and uniforms as described in section 530(b)(4)(A)(ii) with respect to education at an elementary or secondary educational institution.

(*3*) *Local transportation fringe benefit.* The source of compensation in the form of a local transportation fringe benefit is determined based on the location of the individual's principal place of work. For purposes of this paragraph (b)(2)(ii)(D)(*3*), an individual's local transportation fringe benefit is the amount that the individual receives as compensation for local transportation of the individual or the individual's spouse or dependents at the location of the individual's principal place of work. The amount treated as a local transportation fringe benefit is limited to the actual expenses incurred for local transportation and the fair rental value of any vehicle provided by the employer and used predominantly by the individual or the individual's spouse or dependents for local transportation. For this purpose, actual expenses incurred for local transportation do not include the cost (including interest) of the purchase by the individual, or on behalf of the individual, of an automobile or other vehicle.

(*4*) *Tax reimbursement fringe benefit.* The source of compensation in the form of a foreign tax reimbursement fringe benefit is determined based on the location of the jurisdiction that imposed the tax for which the individual is reimbursed.

(*5*) *Hazardous or hardship duty pay fringe benefit.* The source of compensation in the form of a hazardous or hardship duty pay fringe benefit is determined based on the location of the hazardous or hardship duty zone for which the hazardous or hardship duty pay fringe benefit is paid. For purposes of this paragraph (b)(2)(ii)(D)(*5*), a hazardous or hardship duty zone is any place in a foreign country which is either designated by the Secretary of State as a place where living conditions are extraordinarily difficult, notably unhealthy, or where excessive physical hardships exist; and for which a post differential of 15 percent or more would be provided under section 5925(b) of Title 5 of the U.S. Code to any officer or employee of the U.S. Government present at that place, or where a civil insurrection, civil war, terrorism, or wartime conditions threatens physical harm or imminent danger to the health and well-being of the individual. Compensation provided an employee during the period that the employee performs labor or personal services in a hazardous or hardship duty zone may be treated as a hazardous or hardship duty pay fringe benefit only if the employer provides the hazardous or hardship duty pay fringe benefit only to employees performing labor or personal services in a hazardous or hardship duty zone. The amount of compensation treated as a hazardous or hardship duty pay fringe benefit may not exceed the maximum amount that the U.S. government would allow its officers or employees present at that location.

(*6*) *Moving expense reimbursement fringe benefit.* Except as otherwise provided in this paragraph (b)(2)(ii)(D)(*6*), the source of compensation in the form of a moving expense reimbursement is determined based on the location of the employee's new principal place of work. The source of such compensation is determined based on the location of the employee's former principal place of work, however, if the individual provides sufficient evidence that such determination of source is more appropriate under the facts and circumstances of the particular case. For purposes of this paragraph (b)(2)(ii)(D)(*6*), sufficient evidence generally requires an agreement, between the employer and the employee, or a written statement of company policy, which is reduced to writing before the move and which is entered into or established to induce the employee or employees to move to another country. The writing must state that the employer will reimburse the employee for moving expenses that the employee incurs to return to the employee's former principal place of work regardless of whether he or she continues to work for the employer after returning to that location. The writing may contain certain conditions upon which the right to reimbursement is determined as long as those conditions set forth standards that are definitely ascertainable and can only be fulfilled prior to, or through completion of, the employee's return move to the employee's former principal place of work.

(E) *Time basis.* The amount of compensation for labor or personal services performed within the United States determined on a time basis is the amount that bears the same relation to the individual's total compensation as the number of days of performance of the labor or personal services by the individual within the United States bears to his or her total number of days of performance of labor or personal services. A unit of time less than a day

may be appropriate for purposes of this calculation. The time period for which the compensation for labor or personal services is made is presumed to be the calendar year in which the labor or personal services are performed, unless the taxpayer establishes to the satisfaction of the Commissioner, or the Commissioner determines, that another distinct, separate, and continuous period of time is more appropriate. For example, a transfer during a year from a position in the United States to a foreign posting that lasted through the end of that year would generally establish two separate time periods within that taxable year. The first of these time periods would be the portion of the year preceding the start of the foreign posting, and the second of these time periods would be the portion of the year following the start of the foreign posting. However, in the case of a foreign posting that requires short-term returns to the United States to perform services for the employer, such short-term returns would not be sufficient to establish distinct, separate, and continuous time periods within the foreign posting time period but would be relevant to the allocation of compensation relating to the overall time period. In each case, the source of the compensation on a time basis is based upon the number of days (or unit of time less than a day, if appropriate) in that separate time period.

(F) *Multi-year compensation arrangements.* The source of multi-year compensation is determined generally on a time basis, as defined in paragraph (b)(2)(ii)(E) of this section, over the period to which such compensation is attributable. For purposes of this paragraph (b)(2)(ii)(F), *multi-year compensation* means compensation that is included in the income of an individual in one taxable year but that is attributable to a period that includes two or more taxable years. The determination of the period to which such compensation is attributable, for purposes of determining its source, is based upon the facts and circumstances of the particular case. For example, an amount of compensation that specifically relates to a period of time that includes several calendar years is attributable to the entirety of that multi-year period. The amount of such compensation that is treated as from sources within the United States is the amount that bears the same relationship to the total multi-year compensation as the number of days (or unit of time less than a day, if appropriate) that labor or personal services were performed within the United States in connection with the project bears to the total number of days (or unit of time less than a day, if appropriate) that labor or personal services were performed in connection with the project. In the case of stock options, the facts and circumstances generally will be such that the applicable period to which the compensation is attributable is the period between the grant of an option and the date on which all employment-related conditions for its exercise have been satisfied (the vesting of the option).

(G) *Examples.* The following examples illustrate the application of this paragraph (b)(2)(ii):

Example 1. B, a nonresident alien individual, was employed by Corp M, a domestic corporation, from March 1 to December 25 of the taxable year, a total of 300 days, for which B received compensation in the amount of $80,000. Under B's employment contract with Corp M, B was subject to call at all times by Corp M and was in a payment status on a 7-day week basis. Pursuant to that contract, B performed services (or was available to perform services) within the United States for 180 days and performed services (or was available to perform services) without the United States for 120 days. None of B's $80,000 compensation was for fringe benefits as identified in paragraph (b)(2)(ii)(D) of this section. B determined the amount of compensation that is attributable to his labor or personal services performed within the United States on a time basis under paragraph (b)(2)(ii)(A) and (E) of this section. B did not assert, pursuant to paragraph (b)(2)(ii)(C)(*1*)(*i*) of this section, that, under the particular facts and circumstances, an alternative basis more properly determines the source of that compensation than the time basis. Therefore, B must include in income from sources within the United States $48,000 ($80,000 x 180/300) of his compensation from Corporation M.

Example 2. (i) Same facts as in *Example 1* except that Corp M had a company-wide arrangement with its employees, including B, that they would receive an education fringe benefit, as described in paragraph (b)(2)(ii)(D)(*2*) of this section, while working in the United States. During the taxable year, B incurred education expenses for his dependent daughter that qualified for the education fringe benefit in the amount of $10,000, for which B received a reimbursement from Corp M. B did not maintain adequate records or sufficient evidence of this fringe benefit as required by paragraph (b)(2)(ii)(D) of this section. When B filed his Federal income tax return for the taxable year, B did not apply paragraphs (b)(2)(ii)(B) and (D)(*2*) of this section to treat the compensation in the form of the education fringe benefit as income from sources within the United States, the location of his principal place of work during the 300-day period. Rather, B combined the $10,000 reimbursement with his base compensation of $80,000 and applied the time basis of paragraph (b)(2)(ii)(A) of this section to determine the source of his gross income.

(ii) On audit, B argues that because he failed to substantiate the education fringe benefit in accordance with paragraph (b)(2)(ii)(D) of this section, his entire employment compensation from Corp M is sourced on a time basis pursuant to paragraph (b)(2)(ii)(A) of this section. The Commissioner, after reviewing Corp M's fringe benefit arrangement, determines, pursuant to paragraph (b)(2)(ii)(C)(*1*)(*ii*) of this section, that the $10,000 educational expense reimbursement constitutes in substance a fringe benefit described in paragraph (b)(2)(ii)(D)(*2*) of this section, notwithstanding a failure to meet all of the requirements of paragraph (b)(2)(ii)(D) of this section, and that an alternative geographic source basis, under the facts and circumstances of this particular case, is a more reasonable manner to determine the source of the compensation than the time basis used by B.

Example 3. (i) A, a United States citizen, is employed by Corp N, a domestic corporation. A's principal place of work is in the United States. A earns an annual salary of $100,000. During the first quarter of the calendar year (which is also A's taxable year), A performed services entirely within the United States. At the beginning of the second quarter of the calendar year, A was transferred to Country X for the remainder of the year and received, in addition to her annual salary, $30,000 in fringe benefits that are attributable to her new principal place of work in Country X. Corp N paid these fringe benefits separately from A's annual salary. Corp N supplied A with a statement detailing that $25,000 of the fringe benefit was paid for housing, as defined in paragraph (b)(2)(ii)(D)(*1*) of this section, and $5,000 of the fringe benefit was paid for local transportation, as defined in paragraph (b)(2)(ii)(D)(*3*) of this section. None of the local transportation fringe benefit is excluded from the employee's gross income as a qualified transportation fringe benefit under section 132(a)(5). Under A's employment contract, A was required to work on a 5-day week basis, Monday through Friday. During the last three quarters of the year, A performed services 30 days in the United States and 150 days in Country X and other foreign countries.

(ii) A determined the source of all of her compensation from Corp N pursuant to paragraph (b)(2)(ii)(A), (B), and (D)(*1*) and (*3*) of this section. A did not assert, pursuant to paragraph (b)(2)(ii)(C)(*1*)(*i*) of this section, that, under the particular facts and circumstances, an alternative basis more properly determines the source of that compensation than the bases set forth in paragraphs (b)(2)(ii)(A), (B), and (D)(*1*) and (*3*) of this section. However, in applying the time basis set forth in paragraph (b)(2)(ii)(E) of this section, A establishes to the satisfaction of the Commissioner that the first quarter of the calendar year and the last three quarters of the calendar year are two separate, distinct, and continuous periods of time. Accordingly, $25,000 of A's annual salary is attributable to the first quarter of the year (25 percent of $100,000). This amount is entirely compensation that was attributable to the labor or personal services performed

within the United States and is, therefore, included in gross income as income from sources within the United States. The balance of A's compensation as an employee of Corp N, $105,000 (which includes the $30,000 in fringe benefits that are attributable to the location of A's principal place of work in Country X), is compensation attributable to the final three quarters of her taxable year. During those three quarters, A's periodic performance of services in the United States does not result in distinct, separate, and continuous periods of time. Of the $75,000 paid for annual salary, $12,500 (30/180 x $75,000) is compensation that was attributable to the labor or personal services performed within the United States and $62,500 (150/180 x $75,000) is compensation that was attributable to the labor or personal services performed outside the United States. Pursuant to paragraphs (b)(2)(ii)(B) and (D)(*1*) and (*3*) of this section, A sourced the $25,000 received for the housing fringe benefit and the $5,000 received for the local transportation fringe benefit based on the location of her principal place of work, Country X. Accordingly, A included the $30,000 in fringe benefits in her gross income as income from sources without the United States.

Example 4. Same facts as in *Example 3.* Of the 150 days during which A performed services in Country X and in other foreign countries (during the final three quarters of A's taxable year), she performed 30 days of those services in Country Y. Country Y is a country designated by the Secretary of State as a place where living conditions are extremely difficult, notably unhealthy, or where excessive physical hardships exist and for which a post differential of 15 percent or more would be provided under section 5925(b) of Title 5 of the U.S. Code to any officer or employee of the U.S. government present at that place. Corp N has a policy of paying its employees a $65 premium per day for each day worked in countries so designated. The $65 premium per day does not exceed the maximum amount that the U.S. government would pay its officers or employees stationed in Country Y. Because A performed services in Country Y for 30 days, she earned additional compensation of $1,950. The $1,950 is considered a hazardous duty or hardship pay fringe benefit and is sourced under paragraphs (b)(2)(ii)(B) and (D)(*5*) of this section based on the location of the hazardous or hardship duty zone, Country Y. Accordingly, A included the amount of the hazardous duty or hardship pay fringe benefit ($1,950) in her gross income as income from sources without the United States.

Example 5. (i) During 2006 and 2007, Corp P, a domestic corporation, employed four United States citizens, E, F, G, and H to work in its manufacturing plant in Country V. As part of his or her compensation package, each employee arranged for local transportation unrelated to Corp P's business needs. None of the local transportation fringe benefit is excluded from the employee's gross income as a qualified transportation fringe benefit under section 132(a)(5) and (f).

(ii) Under the terms of the compensation package that E negotiated with Corp P, Corp P permitted E to use an automobile owned by Corp P. In addition, Corp P agreed to reimburse E for all expenses incurred by E in maintaining and operating the automobile, including gas and parking. Provided that the local transportation fringe benefit meets the requirements of paragraph (b)(2)(ii)(D)(*3*) of this section, E's compensation with respect to the fair rental value of the automobile and reimbursement for the expenses E incurred is sourced under paragraphs (b)(2)(ii)(B) and (D)(*3*) of this section based on E's principal place of work in Country V. Thus, the local transportation fringe benefit will be included in E's gross income as income from sources without the United States.

(iii) Under the terms of the compensation package that F negotiated with Corp P, Corp P let F use an automobile owned by Corp P. However, Corp P did not agree to reimburse F for any expenses incurred by F in maintaining and operating the automobile. Provided that the local transportation fringe benefit meets the requirements of paragraph (b)(2)(ii)(D)(*3*) of this section, F's compensation with respect to the fair rental value of the automobile is sourced under paragraphs (b)(2)(ii)(B) and (D)(*3*) of this section based on F's principal place of work in Country V. Thus, the local transportation fringe benefit will be included in F's gross income as income from sources without the United States.

(iv) Under the terms of the compensation package that G negotiated with Corp P, Corp P agreed to reimburse G for the purchase price of an automobile that G purchased in Country V. Corp P did not agree to reimburse G for any expenses incurred by G in maintaining and operating the automobile. Because the cost to purchase an automobile is not a local transportation fringe benefit as defined in paragraph (b)(2)(ii)(D)(*3*) of this section, the source of the compensation to G will be determined pursuant to paragraph (b)(2)(ii)(A) or (C) of this section.

(v) Under the terms of the compensation package that H negotiated with Corp P, Corp P agreed to reimburse H for the expenses that H incurred in maintaining and operating an automobile, including gas and parking, which H purchased in Country V. Provided that the local transportation fringe benefit meets the requirements of paragraph (b)(2)(ii)(D)(*3*) of this section, H's compensation with respect to the reimbursement for the expenses H incurred is sourced under paragraphs (b)(2)(ii)(B) and (D)(*3*) of this section based on H's principal place of work in Country V. Thus, the local transportation fringe benefit will be included in H's gross income as income from sources without the United States.

Example 6. (i) On January 1, 2006, Company Q compensates employee J with a grant of options to which section 421 does not apply that do not have a readily ascertainable fair market value when granted. The stock options permit J to purchase 100 shares of Company Q stock for $5 per share. The stock options do not become exercisable unless and until J performs services for Company Q (or a related company) for 5 years. J works for Company Q for the 5 years required by the stock option grant. In years 2006–08, J performs all of his services for Company Q within the United States. In 2009, J performs ½ of his services for Company Q within the United States and ½ of his services for Company Q without the United States. In year 2010, J performs his services entirely without the United States. On December 31, 2012, J exercises the options when the stock is worth $10 per share. J recognizes $500 in taxable compensation ($(10–5) X 100) in 2012.

(ii) Under the facts and circumstances, the applicable period is the 5-year period between the date of grant (January 1, 2006) and the date the stock options become exercisable (December 31, 2010). On the date the stock options become exercisable, J performs all services necessary to obtain the compensation from Company Q. Accordingly, the services performed after the date the stock options become exercisable are not taken into account in sourcing the compensation from the stock options. Therefore, pursuant to paragraph (b)(2)(ii)(A), since J performs 3½ years of services for Company Q within the United States and 1½ years of services for Company Q without the United States during the 5-year period, 7/10 of the $500 of compensation (or $350) recognized in 2012 is income from sources within the United States and the remaining 3/10 of the compensation (or $150) is income from sources without the United States.

* * * * *

(d) *Effective date.* * * * The first sentence of § 1.861–4(a)(1) and § 1.861–4(b) apply to taxable years beginning on or after publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129771–04]

RIN 1545–BD49

Guidance Under Section 951 for Determining Pro Rata Share

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations under section 951(a) of the Internal Revenue Code (Code) that provide guidance for determining a United States shareholder's *pro rata* share of a controlled foreign corporation's (CFC's) subpart F income, previously excluded subpart F income withdrawn from

investment in less developed countries, previously excluded subpart F income withdrawn from foreign base company shipping operations, and amounts determined under section 956. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by November 4, 2004. Outlines of topics to be discussed at the public hearing scheduled for Thursday, November 18, 2004, at 10 a.m. must be received by November 4, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–129771–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–129771–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–129771–04). If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Sambur, (202) 622–3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 951(a) of the Code relating to the determination of a United States shareholder's *pro rata* share of a CFC's subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, previously excluded subpart F income withdrawn from foreign base company shipping operations, and amounts determined under section 956 (collectively, section 951(a)(1) amounts).

In general, section 951(a)(1) requires a United States shareholder that owns stock in a CFC to include its pro rata share of such section 951(a)(1) amounts in its gross income. *Pro rata* share is defined in section 951(a)(2) of the Code as the amount:

(A) Which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a [CFC] it had distributed *pro rata* to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a [CFC] bears to the entire year, reduced by

(B) The amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

The current regulations provide rules for determining a United States shareholder's *pro rata* share of a CFC's section 951(a)(1) amounts in the case where the CFC has more than one class of stock outstanding. These regulations have remained unchanged since 1965. In the 39 years since the rules were issued, international business arrangements have become much more complex than contemplated in 1965, reflecting in particular more complex structures for determining return on capital. The current regulations do not take into account these developments. The IRS and Treasury Department, therefore, believe that updated guidance is necessary to ensure results that are more consistent with the economic interests of shareholders in a CFC.

Explanation of Provisions

A. In General

Section 1.951–1(e) defines *pro rata share* for purposes of section 951(a) of the Code. These proposed regulations replace existing § 1.951–1(e)(2) through (4) and are intended to provide allocations that are more consistent with the economic interests of shareholders in a CFC. The proposed regulations also include a conforming change to § 1.951–1(e)(1) to reflect the 1993 legislative amendment to section 956 of the Code.

B. Pro Rata Share Rules for CFCs With Only One Class of Stock

Proposed § 1.951–1(e)(2) adds an explicit rule to clarify the method by which a United States shareholder's pro rata share of a CFC's section 951(a)(1) amounts is determined in the case where the CFC has only one class of stock outstanding. In such a case, each United States shareholder's share of the CFC's section 951(a)(1) amounts shall be determined on a per share basis. *Example 1* of proposed § 1.951–1(e)(6) illustrates the application of this rule.

C. Pro Rata Share Rules for CFCs With More Than One Class of Stock

1. In General

Proposed § 1.951–1(e)(3) provides rules for determining a United States shareholder's *pro rata* share of a CFC's section 951(a)(1) amounts in the case where the CFC has more than one class of stock outstanding. Proposed § 1.951–1(e)(3)(i) retains the general rule in the current regulations, which provides that the amount of subpart F income, withdrawals, or amounts determined under section 956 which shall be taken into account with respect to any one class of stock shall be that amount which bears the same ratio to the total of such subpart F income, withdrawals, or amounts determined under section 956 for such year as the earnings and profits which would be distributed with respect to such class of stock if all earnings and profits of such corporation for such year were distributed on the last day of such corporation's taxable year on which such corporation is a CFC (the hypothetical distribution date) bear to the total earnings and profits of such corporation for such taxable year. *Examples 2* and *8* of proposed § 1.951–1(e)(6) illustrate the application of this general rule.

This general rule applies in cases where a CFC has more than one class of stock outstanding and where the allocation of the amount of the CFC's earnings and profits between or among different classes of stock does not depend upon the exercise of discretion by the board of directors or similar governing body of the CFC. The IRS and Treasury Department believe that this general rule, in practice, will apply in most cases in which a CFC has more than one class of stock outstanding.

2. Discretionary Power To Allocate Earnings to Different Classes of Stock

In the case where the allocation of the amount of a CFC's earnings and profits for the taxable year between two or more classes of stock depends upon the exercise of discretion by the board of directors or a similar governing body of the CFC, proposed § 1.951–1(e)(3)(ii)(A) provides a new general rule that determines the pro rata share of the CFC's section 951(a)(1) amounts. This new general rule allocates earnings and profits to classes of shares with discretionary distribution rights by reference to the relative values of such classes of shares on the hypothetical distribution date. Under this new rule, the allocation of earnings and profits to each class of stock with discretionary distribution rights generally will be the amount of earnings and profits that

bears the same ratio to the total earnings and profits allocated to all classes of stock with discretionary distribution rights as the value of all shares of such class determined on the hypothetical distribution date bears to the total value of all classes of stock with discretionary distribution rights. This allocation approach is analogous to the approach used for allocating adjustments among classes of stock for consolidated return purposes. *See* § 1.1502–32(c). For guidance with respect to the valuation of stock, see, *e.g., Framatome Connectors USA, Inc.* v. *Comm'r*, 118 T.C. 32 (2002) (establishing factors to be used to value stock of a CFC for purposes of determining whether the foreign corporation was a CFC pursuant to the value test in section 957(a)(2)); compare Rev. Rul. 59–60, 1959–1 C.B. 237 (valuing privately held stock for estate tax purposes). (*See* § 601.601(d)(2)(ii)(*b*)). In cases where the value of each share of two or more classes of stock with discretionary distribution rights is substantially the same, the allocation of earnings and profits to each class of stock shall be made as if such classes constituted one class of stock. *Examples 3* and *4* of proposed § 1.951–1(e)(6) illustrate the application of these rules.

The general rules of proposed § 1.951–1(e)(3)(i) and (ii)(A) both apply in certain cases where a CFC has more than two classes of stock outstanding. Specifically, these rules both apply where a CFC has at least two classes of stock with discretionary distribution rights and at least one class of stock with non-discretionary distribution rights. In general, a United States shareholder's *pro rata* share of a CFC's section 951(a)(1) amounts is determined by allocating earnings and profits to classes of shares with non-discretionary distribution rights (*e.g.*, nonparticipating preferred stock) in accordance with the rules of proposed paragraph (e)(3)(i), and then allocating the remaining earnings and profits, if any, to each remaining class of stock in accordance with the relative value rules of proposed paragraph (e)(3)(ii)(A).

The new rule in proposed § 1.951–1(e)(3)(ii)(A) is intended to ensure that the determination of a United States shareholder's pro rata share of a CFC's section 951(a)(1) amounts in cases where the United States shareholder's stock has discretionary distribution rights properly reflects the true economics of the shareholder's investment in the CFC. The IRS and Treasury Department believe that in the case of multiple classes of stock with discretionary distribution rights, the relative value of the classes of stock better reflects the economics of the investment in a CFC, and thus provides a better mechanism for determining a United States shareholder's *pro rata* share of a CFC's section 951(a)(1) amounts.

Proposed § 1.951–1(e)(3)(ii)(B) provides that the right to redeem stock of a CFC will not be considered a discretionary distribution right for purposes of determining a shareholder's *pro rata* share under proposed § 1.951–1(e)(3)(ii)(A), even if the resulting redemption would be treated as a distribution of property to which section 301 applies pursuant to section 302(d). *Example 7* of proposed § 1.951–1(e)(6) illustrates the application of this rule.

3. Special Allocation Rule for Stock With Mixed Distribution Rights

Proposed § 1.951–1(e)(3)(iii) provides a specific rule that applies the general rules of proposed § 1.951–1(e)(3)(i) and (ii)(A) in cases where a class of stock provides for both non-discretionary distribution rights and discretionary distribution rights (*e.g.*, participating preferred stock). In such a case, the proposed regulations require separate allocations of earnings and profits based upon the non-discretionary distribution rights and the relative value of the discretionary distribution rights. *Example 5* of proposed § 1.951–1(e)(6) illustrates the application of this rule.

4. Dividend Arrearages

Proposed § 1.951–1(e)(3)(iv) retains the existing rule with respect to arrearages in dividends with respect to classes of preferred stock of the CFC. The earnings and profits for the taxable year shall be attributable to such arrearage only to the extent the arrearage exceeds the earnings and profits remaining from prior taxable years beginning after December 31, 1962.

D. Scope of Deemed Distribution

Proposed § 1.951–1(e)(4) sets forth a special rule that provides that no amount shall be considered to be distributed with respect to a particular class of stock under proposed § 1.951–1(e)(3) to the extent that such a distribution would constitute a distribution in redemption of stock, a distribution in liquidation, or a return of capital. This rule would apply notwithstanding the terms of any class of stock of the CFC or any arrangement involving the CFC. Thus, for purposes of determining the allocation of earnings and profits to a class of stock of a CFC based on the earnings and profits which would be distributed with respect to such class of stock if all earnings and profits were distributed *pro rata* to its shareholders on the hypothetical distribution date, taxpayers may not consider any part of the hypothetical distribution as a distribution in redemption of stock (even if such redemption would be treated as a distribution of property to which section 301 applies pursuant to section 302(d)), a distribution in liquidation, or a return of capital. The IRS and Treasury Department believe that such characterizations of the hypothetical distribution would not properly reflect a United States shareholder's economic interest in the CFC and thus should not be considered in determining a United States shareholder's *pro rata* share of section 951(a)(1) amounts. *Example 7* of proposed § 1.951–1(e)(6) illustrates the application of this rule.

E. Restrictions or Other Limitations on Distributions of Earnings and Profits by a CFC

Proposed § 1.951–1(e)(5) provides that, except in the case of a governmental restriction described in section 964(b) of the Code, a restriction or other limitation on the distribution of earnings and profits to a United States shareholder by a CFC will not be taken into account for purposes of determining the amount of earnings and profits allocated to a class of stock of a CFC or the amount of the United States shareholder's *pro rata* share of the CFC's section 951(a)(1) amounts. This rule applies in all cases, including cases where the restriction or limitation is the result of an arrangement between unrelated parties or an arrangement that has a non-tax motivated business purpose and economic substance. The IRS and Treasury Department believe that taking into account such restrictions or limitations in determining a United States shareholder's *pro rata* share is contrary to the purpose of section 951(a) and would not properly reflect a United States shareholder's economic interest in the CFC. *Example 6* of proposed § 1.951–1(e)(6) illustrates the application of this rule.

Proposed § 1.951–1(e)(5)(ii) provides a broad definition of *restrictions or other limitations on distributions* that are covered by this rule. Under proposed § 1.951–1(e)(5)(iii), the right to receive a preferred dividend is not considered a restriction or other limitation on the distribution of earnings and profits with respect to other classes of stock. Proposed § 1.951–1(e)(5)(iv) lists some instances where restrictions or other limitations will not be taken into account.

Proposed Effective Date

These regulations are proposed to apply for taxable years of a controlled foreign corporation beginning on or after January 1, 2005.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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 request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for November 18, 2004, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. 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 information about having your name placed on the building access 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 or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 4, 2004. 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.

Comments are requested on all aspects of the proposed regulations, including those aspects for which specific requests for comments are set forth above.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed 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 1.951–1 is amended by:

1. Removing the language "increase in earnings invested in United States property" in paragraph (e)(1) and adding "amount determined under section 956" in its place.

2. Revising paragraphs (e)(2) through (e)(4) and adding paragraphs (e)(5) through (e)(7).

The revisions and additions read as follows:

§ 1.951–1 Amounts included in gross income of United States shareholders.

* * * * *

(e) * * *

(2) *One class of stock.* If a controlled foreign corporation for a taxable year has only one class of stock outstanding, each United States shareholder's pro rata share of such corporation's subpart F income, withdrawal, or amount determined under section 956, for the taxable year under paragraph (e)(1) of this section shall be determined by allocating the controlled foreign corporation's earnings and profits on a per share basis.

(3) *More than one class of stock*—(i) *In general.* Subject to paragraphs (e)(3)(ii) and (e)(3)(iii) of this section, if a controlled foreign corporation for a taxable year has more than one class of stock outstanding, the amount of such corporation's subpart F income, withdrawal, or amount determined under section 956, for the taxable year taken into account with respect to any one class of stock for purposes of paragraph (e)(1) of this section shall be that amount which bears the same ratio to the total of such subpart F income, withdrawal, or amount determined under section 956 for such year as the earnings and profits which would be distributed with respect to such class of stock if all earnings and profits of such corporation for such year were distributed on the last day of such corporation's taxable year on which such corporation is a controlled foreign corporation (the hypothetical distribution date), bear to the total earnings and profits of such corporation for such taxable year.

(ii) *Discretionary power to allocate earnings to different classes of stock*—(A) *In general.* Subject to paragraph (e)(3)(iii) of this section, the rules of this paragraph apply for purposes of paragraph (e)(1) of this section if the allocation of a controlled foreign corporation's earnings and profits for the taxable year between two or more classes of stock depends upon the exercise of discretion by that body of persons which exercises with respect to such corporation the powers ordinarily exercised by the board of directors of a domestic corporation (discretionary distribution rights). First, the earnings and profits of the corporation are allocated under paragraph (e)(3)(i) of this section to any class or classes of stock with non-discretionary distribution rights (*e.g.*, preferred stock entitled to a fixed return). Second, the amount of earnings and profits allocated to a class of stock with discretionary distribution rights shall be that amount which bears the same ratio to the remaining earnings and profits of such corporation for such taxable year as the value of all shares of such class of stock, determined on the hypothetical distribution date, bears to the total value of all shares of all classes of stock with discretionary distribution rights of such corporation, determined on the hypothetical distribution date. For purposes of the preceding sentence, in the case where the value of each share of two or more classes of stock with discretionary distribution rights is substantially the same on the hypothetical distribution date, the allocation of earnings and profits to such classes shall be made as if such classes constituted one class of stock in which each share has the same rights to dividends as any other share.

(B) *Special rule for redemption rights.* For purposes of paragraph (e)(3)(ii)(A) of this section, discretionary distribution rights do not include rights to redeem shares of a class of stock (even if such redemption would be treated as a distribution of property to which section 301 applies pursuant to section 302(d)).

(iii) *Special allocation rule for stock with mixed distribution rights.* For purposes of paragraphs (e)(3)(i) and (e)(3)(ii) of this section, in the case of a class of stock with both discretionary and non-discretionary distribution rights, earnings and profits shall be allocated to the non-discretionary distribution rights under paragraph (e)(3)(i) of this section and to the discretionary distribution rights under paragraph (e)(3)(ii) of this section. In such a case, paragraph (e)(3)(ii) of this section will be applied such that the value used in the ratio will be the value of such class of stock solely attributable to the discretionary distribution rights of such class of stock.

(iv) *Dividend arrearages.* For purposes of paragraph (e)(3)(i) of this section, if an arrearage in dividends for prior taxable years exists with respect to a class of preferred stock of such corporation, the earnings and profits for the taxable year shall be attributed to such arrearage only to the extent such arrearage exceeds the earnings and profits of such corporation remaining from prior taxable years beginning after December 31, 1962.

(4) *Scope of deemed distribution.* Notwithstanding the terms of any class of stock of the controlled foreign corporation or any agreement or arrangement with respect thereto, no amount shall be considered to be distributed with respect to a particular class of stock for purposes of paragraph (e)(3) of this section to the extent that such distribution would constitute a distribution in redemption of stock (even if such redemption would be treated as a distribution of property to which section 301 applies pursuant to section 302(d)), as a distribution in liquidation, or as a return of capital.

(5) *Restrictions or other limitations on distributions*—(i) *In general.* A restriction or other limitation on distributions of earnings and profits by a controlled foreign corporation will not be taken into account, for purposes of this section, in determining the amount of earnings and profits that shall be allocated to a class of stock of the controlled foreign corporation or the amount of the United States shareholder's pro rata share of the controlled foreign corporation's subpart F income, withdrawal, or amounts determined under section 956 for the taxable year.

(ii) *Definition.* For purposes of this section, a *restriction or other limitation on distributions* includes any limitation that has the effect of limiting the allocation or distribution of earnings and profits by a controlled foreign corporation to a United States shareholder, other than currency or other restrictions or limitations imposed under the laws of any foreign country as provided in section 964(b).

(iii) *Exception for certain preferred distributions.* The right to receive periodically a fixed amount (whether determined by a percentage of par value, a reference to a floating coupon rate, a stated return expressed in terms of a certain amount of dollars or foreign currency, or otherwise) with respect to a class of stock the distribution of which is a condition precedent to a further distribution of earnings or profits that year with respect to any class of stock (not including a distribution in partial or complete liquidation) is not a restriction or other limitation on the distribution of earnings and profits by a controlled foreign corporation under paragraph (e)(5) of this section.

(iv) *Illustrative list of restrictions and limitations.* Except as provided in paragraph (e)(5)(iii) of this section, restrictions or other limitations on distributions include, but are not limited to—

(A) An arrangement that restricts the ability of the controlled foreign corporation to pay dividends on a class of shares of the corporation owned by United States shareholders until a condition or conditions are satisfied (*e.g.*, until another class of stock is redeemed);

(B) A loan agreement entered into by a controlled foreign corporation that restricts or otherwise affects the ability to make distributions on its stock until certain requirements are satisfied; or

(C) An arrangement that conditions the ability of the controlled foreign corporation to pay dividends to its shareholders on the financial condition of the controlled foreign corporation.

(6) *Examples.* The application of this section may be illustrated by the following examples:

Example 1. (i) *Facts.* FC1, a controlled foreign corporation within the meaning of section 957(a), has outstanding 100 shares of one class of stock. Corp E, a domestic corporation and a United States shareholder of FC1, within the meaning of section 951(b), owns 60 shares. Corp H, a domestic corporation and a United States shareholder of FC1, within the meaning of section 951(b), owns 40 shares. FC1, Corp E, and Corp H each use the calendar year as a taxable year. Corp E and Corp H are shareholders of FC1 for its entire 2004 taxable year. For 2004, FC1 has $100x of earnings and profits, and income of $100x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a). FC1 makes no distributions during that year.

(ii) *Analysis.* FC1 has one class of stock. Therefore, under paragraph (e)(2) of this section, FC1's earnings and profits are allocated on a per share basis. Accordingly, for the taxable year 2004, Corp E's pro rata share of FC1's subpart F income is $60x (60/100 × $100x) and Corp H's pro rata share of FC1's subpart F income is $40x (40/100 × $100x).

Example 2. (i) *Facts.* FC2, a controlled foreign corporation within the meaning of section 957(a), has outstanding 70 shares of common stock and 30 shares of 4-percent, nonparticipating, voting, preferred stock with a par value of $10x per share. The common shareholders are entitled to dividends when declared by the board of directors of FC2. Corp A, a domestic corporation and a United States shareholder of FC2, within the meaning of section 951(b), owns all of the common shares. Individual B, a foreign individual, owns all of the preferred shares. FC2 and Corp A each use the calendar year as a taxable year. Corp A and Individual B are shareholders of FC2 for its entire 2004 taxable year. For 2004, FC1 has $50x of earnings and profits, and income of $50x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a). In 2004, FC2 distributes as a dividend $12x to Individual B with respect to Individual B's preferred shares. FC2 makes no other distributions during that year.

(ii) *Analysis.* FC2 has two classes of stock, and there are no restrictions or other limitations on distributions within the meaning of paragraph (e)(5) of this section. If the total $50x of earnings were distributed on December 31, 2004, $12x would be distributed with respect to Individual B's preferred shares and the remainder, $38x, would be distributed with respect to Corp A's common shares. Accordingly, under paragraph (e)(3)(i) of this section, Corp A's pro rata share of FC1's subpart F income is $38x for taxable year 2004.

Example 3. (i) *Facts.* The facts are the same as in Example 2, except that the shares owned by Individual B are Class B common shares and the shares owned by Corp A are Class A common shares and the board of directors of FC2 may declare dividends with respect to one class of stock without declaring dividends with respect to the other class of stock. The value of the Class A common shares on the last day of FC2's 2004 taxable year is $680x and the value of the Class B common shares on that date is $300x. The board of directors of FC2 determines that FC2 will not make any distributions in 2004 with respect to the Class A and B common shares of FC2.

(ii) *Analysis.* The allocation of FC2's earnings and profits between its Class A and Class B common shares depends solely on the exercise of discretion by the board of directors of FC2. Therefore, under paragraph

(e)(3)(ii)(A) of this section, the allocation of earnings and profits between the Class A and Class B common shares will depend on the value of each class of stock on the last day of the controlled foreign corporation's taxable year. On the last day of FC2's taxable year 2004, the Class A common shares had a value of $9.71x/share and the Class B common shares had a value of $10x/share. Because each share of the Class A and Class B common stock of FC2 has substantially the same value on the last day of FC2's taxable year, under paragraph (e)(3)(ii)(A) of this section, for purposes of allocating the earnings and profits of FC2, the Class A and Class B common shares will be treated as one class of stock. Accordingly, for FC2's taxable year 2004, the earnings and profits of FC2 are allocated $35x (70/100 × $50x) to the Class A common shares and $15x (30/100 × $50x) to the Class B common shares. For its taxable year 2004, Corp A's pro rata share of FC2's subpart F income will be $35x.

Example 4. (i) *Facts.* FC3, a controlled foreign corporation within the meaning of section 957(a), has outstanding 100 shares of Class A common stock, 100 shares of Class B common stock and 10 shares of 5-percent nonparticipating, voting preferred stock with a par value of $50x per share. The value of the Class A shares on the last day of FC3's 2004 taxable year is $800x. The value of the Class B shares on that date is $200x. The Class A and Class B shareholders each are entitled to dividends when declared by the board of directors of FC3, and the board of directors of FC3 may declare dividends with respect to one class of stock without declaring dividends with respect to the other class of stock. Corp D, a domestic corporation and a United States shareholder of FC3, within the meaning of section 951(b), owns all of the Class A shares. Corp N, a domestic corporation and a United States shareholder of FC3, within the meaning of section 951(b), owns all of the Class B shares. Corp S, a domestic corporation and a United States shareholder of FC3, within the meaning of section 951(b), owns all of the preferred shares. FC3, Corp D, Corp N, and Corp S each use the calendar year as a taxable year. Corp D, Corp N, and Corp S are shareholders of FC3 for all of 2004. For 2004, FC3 has $100x of earnings and profits, and income of $100x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a). In 2004, FC3 distributes as a dividend $25x to Corp S with respect to the preferred shares. The board of directors of FC3 determines that FC3 will make no other distributions during that year.

(ii) *Analysis.* The distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Pursuant to paragraph (e)(3)(i) of this section, if the total $100x of earnings were distributed on December 31, 2004, $25x would be distributed with respect to Corp S's preferred shares and the remainder, $75x would be distributed with respect to Corp D's Class A shares and Corp N's Class B shares. The allocation of that $75x between its Class A and Class B shares depends solely on the exercise of discretion by the board of directors of FC3. The value of the Class A shares ($8x/share) and the value of the Class B shares ($2x/share) are not substantially the same on the last day of FC3's taxable year 2004. Therefore for FC3's taxable year 2004, under paragraph (e)(3)(ii)(A) of this section, the earnings and profits of FC3 are allocated $60x ($800/$1,000 × $75x) to the Class A shares and $15x ($200/$1,000 × $75x) to the Class B shares. For the 2004 taxable year, Corp D's pro rata share of FC3's subpart F income will be $60x, Corp N's pro rata share of FC3's subpart F income will be $15x and Corp S's pro rata share of FC3's subpart F income will be $25x.

Example 5. (i) *Facts.* FC4, a controlled foreign corporation within the meaning of section 957(a), has outstanding 40 shares of participating, voting, preferred stock and 200 shares of common stock. The owner of a share of preferred stock is entitled to an annual dividend equal to 0.5-percent of FC4's retained earnings for the taxable year and also is entitled to additional dividends when declared by the board of directors of FC4. The common shareholders are entitled to dividends when declared by the board of directors of FC4. The board of directors of FC4 has discretion to pay dividends to the participating portion of the preferred shares (after the payment of the preference) and the common shares. The value of the preferred shares on the last day of FC4's 2004 taxable year is $600x ($100x of this value is attributable to the discretionary distribution rights of these shares) and the value of the common shares on that date is $400x. Corp E, a domestic corporation and United States shareholder of FC4, within the meaning of section 951(b), owns all of the preferred shares. FC5, a foreign corporation that is not a controlled foreign corporation within the meaning of section 957(a), owns all of the common shares. FC4 and Corp E each use the calendar year as a taxable year. Corp E and FC5 are shareholders of FC4 for all of 2004. For 2004, FC4 has $100x of earnings and profits, and income of $100x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a). In 2004, FC4's retained earnings are equal to its earnings and profits. FC4 distributes as a dividend $20x to Corp E that year with respect to Corp E's preferred shares. The board of directors of FC4 determines that FC4 will not make any other distributions during that year.

(ii) *Analysis.* The non-discretionary distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. The allocation of FC4's earnings and profits between its preferred shares and common shares depends, in part, on the exercise of discretion by the board of directors of FC4 because the preferred shares are shares with both discretionary distribution rights and non-discretionary distribution rights. Paragraph (e)(3)(i) of this section is applied first to determine the allocation of earnings and profits of FC4 to the non-discretionary distribution rights of the preferred shares. If the total $100x of earnings were distributed on December 31, 2004, $20x would be distributed with respect to the non-discretionary distribution rights of Corp E's preferred shares. Accordingly, $20x would be allocated to such shares under paragraphs (e)(3)(i) and (iii) of this section. The remainder, $80x, would be allocated under paragraph (e)(3)(ii)(A) and (e)(3)(iii) of this section between the preferred and common shareholders by reference to the value of the discretionary distribution rights of the preferred shares and the value of the common shares. Therefore, the remaining $80x of earnings and profits of FC4 are allocated $16x ($100x/$500x × $80x) to the preferred shares and $64x ($400x/$500x × $80) to the common shares. For its taxable year 2004, Corp E's pro rata share of FC4's subpart F income will be $36x ($20x + $16x).

Example 6. (i) *Facts.* FC6, a controlled foreign corporation within the meaning of section 957(a), has outstanding 10 shares of common stock and 400 shares of 2-percent nonparticipating, voting, preferred stock with a par value of $1x per share. The common shareholders are entitled to dividends when declared by the board of directors of FC6. Corp M, a domestic corporation and a United States shareholder of FC6, within the meaning of section 951(b), owns all of the common shares. FC7, a foreign corporation that is not a controlled foreign corporation within the meaning of section 957(a), owns all of the preferred shares. Corp M and FC7 cause the governing documents of FC6 to provide that no dividends may be paid to the common shareholders until FC6 cumulatively earns $100,000x of income. FC6 and Corp M each use the calendar year as a taxable year. Corp M and FC7 are shareholders of FC6 for all of 2004. For 2004, FC6 has $50x of earnings and profits, and income of $50x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a). In 2004, FC6 distributes as a dividend $8x to FC7 with respect to FC7's preferred shares. FC6 makes no other distributions during that year.

(ii) *Analysis.* The agreement restricting FC6's ability to pay dividends to common shareholders until FC6 cumulatively earns $100,000x of income is a restriction or other limitation, within the meaning of paragraph (e)(5) of this section, and will be disregarded for purposes of calculating Corp M's pro rata share of subpart F income. The non-discretionary distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. If the total $50x of earnings were distributed on December 31, 2004, $8x would be distributed with respect to FC7's preferred shares and the remainder, $42x, would be distributed with respect to Corp M's common shares. Accordingly, under paragraph (e)(3)(i) of this section, Corp M's pro rata share of FC6's subpart F income is $42x for taxable year 2004.

Example 7. (i) *Facts.* FC8, a controlled foreign corporation within the meaning of section 957(a), has outstanding 40 shares of common stock and 10 shares of 4-percent voting preferred stock with a par value of $50x per share. Pursuant to the terms of the preferred stock, FC8 has the right to redeem at any time, in whole or in part, the preferred stock. FP, a foreign corporation, owns all of the preferred shares. Corp G, a domestic corporation wholly owned by FP and a

United States shareholder of FC8, within the meaning of section 951(b), owns all of the common shares. FC8 and Corp G each use the calendar year as a taxable year. FP and Corp G are shareholders of FC8 for all of 2004. For 2004, FC8 has $100x of earnings and profits, and income of $100x with respect to which amounts are required to be included in gross income of United States shareholder under section 951(a). In 2004, FC8 distributes as a dividend $20x to FP with respect to FP's preferred shares. FC8 makes no other distributions during that year.

(ii) *Analysis.* Pursuant to paragraph (e)(3)(ii)(B) of this section, the redemption rights of the preferred shares will not be treated as a discretionary distribution right under paragraph (e)(3)(ii)(A) of this section. Further, if FC8 were treated as having redeemed any preferred shares under paragraph (e)(3)(i) of this section, the redemption would be treated as a distribution to which section 301 applies under section 302(d) due to FP's constructive ownership of the common shares. However, pursuant to paragraph (e)(4) of this section, no amount of earnings and profits would be allocated to the preferred shareholders on the hypothetical distribution date, under paragraph (e)(3)(i) of this section, as a result of FC8's right to redeem, in whole or in part, the preferred shares. FC8's redemption rights with respect to the preferred shares cannot affect the allocation of earnings and profits between FC8's shareholders. Therefore, the redemption rights are not restrictions or other limitations within the meaning of paragraph (e)(5) of this section. Additionally, the non-discretionary distribution rights of the preferred shares are not restrictions or other limitations within the meaning of paragraph (e)(5) of this section. Therefore, if the total $100x of earnings were distributed on December 31, 2004, $20x would be distributed with respect to FP's preferred shares and the remainder, $80x, would be distributed with respect to Corp G's common shares. Accordingly, under paragraph (e)(3)(i) of this section, Corp G's pro rata share of FC8's subpart F income is $80 for taxable year 2004.

Example 8. (i) *Facts.* FC9, a controlled foreign corporation within the meaning of section 957(a), has outstanding 40 shares of common stock and 60 shares of 6-percent, nonparticipating, nonvoting, preferred stock with a par value of $100x per share. Individual J, a United States shareholder of FC9, within the meaning of section 951(b), who uses the calendar year as a taxable year, owns 30 shares of the common stock, and 15 shares of the preferred stock during tax year 2004. The remaining 10 common shares and 45 preferred shares of FC9 are owned by Foreign Individual N, a foreign individual. Individual J and Individual N are shareholders of FC9 for all of 2004. For taxable year 2004, FC9 has $1,000x of earnings and profits, and income of $500x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a).

(ii) *Analysis.* The non-discretionary distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. If the total $1,000x of earnings and profits were distributed on December 31, 2004, $360x ($0.06 \times \$100x \times 60$) would be distributed with respect to FC9's preferred stock and $640x ($1,000x minus $360x) would be distributed with respect to its common stock. Accordingly, of the $500x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a), $180x ($360x/$1,000x \times \$500x$) is allocated to the outstanding preferred stock and $320x ($640x/$1,000x \times \$500x$) is allocated to the outstanding common stock. Therefore, under paragraph (e)(3)(i) of this section, Individual J's pro rata share of such amounts for 2004 is $285x [($180x \times 15/60)+($320x \times 30/40)].

(7) *Effective date.* These regulations apply for taxable years of a controlled foreign corporation beginning on or after January 1, 2005.

Approved: July 16, 2004.

Nancy Jardini,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–17907 Filed 8–5–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 72, 73, 74, 77, 78, and 96

[OAR–2003–0053; FRL–7794–4]

RIN 2060–AL76

Availability of Additional Information Supporting the Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability for the Clean Air Interstate Rule (CAIR).

SUMMARY: The EPA is providing notice that it has placed in the docket for the CAIR (Docket No. OAR–2003–0053) additional information relevant to the rulemaking, including, among other things, a new modeling platform that EPA proposes to use to support the proposed rule. This new modeling platform consists of new meteorological data, updated emissions data, an updated air quality model, and revised procedures for projecting future air quality concentrations. The additional information also includes revised state NO_X budgets.

DATES: Documents were placed in the CAIR docket on or about July 27, 2004. Comments must be received on or before August 27, 2004. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

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

A. Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. 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.

C. E-mail: *A-and-R-Docket@epa.gov*

D. Mail: Air Docket, Clean Air Interstate Rule, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

E. Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, NW., Room B108, 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 online 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. 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 is unable to read your comment and contact you for clarification due to technical difficulties, 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 instructions on submitting comments, go to Unit I of 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, EPA West, Room B102, 1301 Constitution Avenue, 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) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning today's action, please contact Scott Mathias, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–01, Research Triangle Park, NC 27711, telephone (919) 541–5310, e-mail at *mathias.scott@epa.gov.* For legal questions, please contact Howard J. Hoffman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5582, e-mail at *hoffman.howard@epa.gov.* For questions regarding the new air quality modeling platform, please contact Norm Possiel, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, D243–01, Research Triangle Park, NC 27711, telephone (919) 541–5692, e-mail at *possiel.norm@epa.gov.* For questions regarding the emissions inventories of electric generating units (EGUs) and State budgets, please contact Misha Adamantiades, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9093, e-mail at *adamantiades.mikhail@epa.gov.* For questions regarding the emissions inventories for non-EGU sources, please contact Marc Houyoux, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, Mail Code D205–01, Research Triangle Park, NC 27711, telephone (919) 541–4330, e-mail at *houyoux.marc@epa.gov.*

SUPPLEMENTARY INFORMATION: Detailed background information describing the rulemaking may be found in two previously published notices:

1. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule 69 FR 4566, January 30, 2004;

2. Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule 69 FR 32684, June 10, 2004.

The information placed in the docket is also available for public review on the Web site for this rulemaking at *http://www.epa.gov/interstateairquality.* If additional relevant supporting information becomes available in the future, EPA will place this information in the docket and make it available for public review on this Web site.

I. Additional Information on Submitting Comments

A. How Can I Help EPA Ensure That My Comments Are Reviewed Quickly?

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Douglas Solomon, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, Mail Code C304–01, Research Triangle Park, NC 27711, telephone (919) 541–4132, e-mail *iaqrcomments@epa.gov.*

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

1. *Submitting CBI.* Do not submit this information 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.

2. *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.

II. Web Site for Rulemaking Information

The EPA has also established a Web site for this rulemaking at *http://www.epa.gov/interstateairquality.* The Web site includes the rulemaking actions and other related information that the public may find useful.

III. New Information Placed in the Docket

The EPA has placed the information described below in the CAIR docket OAR–2003–0053.

- CAIR Emissions Inventory Overview. This item provides an overview of the development of the updated 2001, 2010, and 2015 emissions inventories.
- Non-Electric Generating Unit (EGU) Nonpoint Control Development. This item describes the development of future base case emissions controls for stationary sources other than utilities.
- Non-EGU Nonpoint Growth Development. This item describes the development of growth factors used to project 2001 emissions for future-year scenarios for stationary sources other than utilities.

- Commercial Marine, Airports, and Trains Approach. This item describes the development of emissions estimates for these three nonroad mobile categories.
- Commercial Marine, Airports, and Trains Data. This file contains the supporting data used in developing emissions estimates for commercial marine vessels, airports and trains.
- Fire Temporal Documentation. This item describes the development of temporal profiles used in estimating emissions from fires.
- 2001 EGU Documentation. This item describes the development of 2001 emissions estimates for sources in the utility sector.
- BEIS3.12 Documentation. This item describes the Biogenic Emissions Inventory System (BEIS) version 3.12, with modifications used in developing the biogenic emissions estimates.
- Mobile NMIM Documentation. This item describes the National Mobile Inventory Model (NMIM).
- Mobile NMIM Usage for CAIR. This file describes how the National Mobile Inventory Model (NMIM) was used for CAIR air quality modeling.
- NEI 2001 to NEEDS Matches. This file contains data on how utilities contained in the 2001 National Emissions Inventory (NEI) were matched to those in the National Electric Energy Database System (NEEDS) 2003 database.
- $PM_{2.5}$ Emissions Speciation Updates. This file contains updated factors used to divide emissions of $PM_{2.5}$ into component species and a description of the sources of this information.
- Emissions Summary State-Sector-Speciation 2001–2010–2015. This file contains annual emissions of VOC, CO SO_2, NO_X, NH_3, PM_{10} and $PM_{2.5}$ model species. Data are presented by State and by major sector for the 2001 Base Year, 2010 Base Case, and 2015 Base Case, not including 2010 and 2015 emissions from electric generating units.
- Emissions Summary State-Sector 2001–2010–2015. This file contains annual emissions of VOC, CO, SO_2, NO_X, NH_3, and $PM_{2.5}$. Data are presented by State and by major sector for the 2001 Base Year, 2010 Base Case, and 2015 Base Case, not including 2010 and 2015 emissions from electric generating units.
- Report on 2001 MM–5 Simulations. This report documents the simulations of the Mesoscale Meteorological Model (MM–5) for 2001 and includes an evaluation of selected MM–5 output meteorological data.
- Peer Review of the Community Multiscale Air Quality (CMAQ) Model. This report contains a summary by the peer review panel of the December 2003 external peer review of CMAQ.
- Community Multiscale Air Quality (CMAQ) Model Documentation Reference. This item identifies publically available references for CMAQ.
- Use of Goddard Earth Observing System—CHEMistry (GEOS–CHEM) Model for CMAQ Boundary Conditions. This item is a presentation on the procedures for developing initial and boundary conditions for the Community Multiscale Air Quality (CMAQ) model from the GEOS–CHEM global chemistry model.
- Disk drive containing selected model input data sets and model codes for the updated CAIR modeling platform. The data on this disk are also available for ftp download. Contact Warren Peters at *peters.warren@epa.gov* to access these data.
- Configuration of CMAQ for CAIR Annual Simulations. This item identifies the horizontal and vertical configuration of CMAQ as applied by EPA for simulating the CAIR emissions scenarios.
- EPA_OAQPS CMAQ Evaluation for 2001. This report describes an evaluation by the EPA Office of Air Quality Planning and Standards of CMAQ, as applied for 2001.
- EPA_ORD Evaluation of CMAQ for 2001. This item contains a presentation on the evaluation by the EPA Office of Research and Development of CMAQ, as applied for 2001.
- Revised Speciated Model Attainment Test. This item describes the revised procedures for the Speciated Modeled Attainment Test (SMAT) and Design Value (DV) averaging technique.
- National Electric Energy Database System (NEEDS), which contains unit level data used in EPA modeling applications.
- Correction to State NO_X Budgets.

The EPA may place additional documents in the docket, and if EPA does so, EPA will announce their availability by posting a notice on the CAIR Web site *http://www.epa.gov/interstateairquality*.

Dated: July 30, 2004.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–18029 Filed 8–5–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7653]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required.

They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *elevation in feet *(NGVD)	
				Existing	Modified
OH	Chagrin Falls (Village) Cuyahoga County.	Chagrin River	At the downstream corporate limit, approximately 4,735 feet downstream of Miles Road.	*836	*838
			Just downstream of the corporate limit, approximately 5,100 feet upstream of the dam.	None	*979
Maps are available for inspection at the Village Hall, 21 W. Washington Street, Chagrin Falls, Ohio.					
Send comments to Mr. Ben Himes, Chief Administrative Officer, Village of Chagrin Falls, 21 West Washington Street, Chagrin Falls, Ohio 44022.					
OH	Lake County (Unincorporated Areas).	Red Creek	Just upstream of CSX Railroad	None	*677
			Approximately 700 feet upstream of Farm Road.	None	*696
		Red Mill Creek	A reach approximately 1,200 feet south of Norfolk Southern Railroad.	None	*704
			Area east of the Main Street and 700 feet south of Norfolk Southern Railroad.	None	#2
Maps are available for inspection at the Lake County Engineers Office, 550 Blackbrook Road, Painesville, Ohio.					
Send comments to Mr. Mike Krems, Chief Building Inspector, 27 Woodland Road, Painesville, Ohio 44077.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–17959 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7655]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a

newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	* Elevation in feet (NGVD) existing/modified	Communities affected
Red Creek	*696 to *699	Village of Perry, OH
Red Mill Creek	*684 to *710	
Area east of Main Street and approximately 1,300 feet south of Norfolk Southern Railroad.	#2	

Maps are available for inspection at the Village of Perry Municipal Center, 3758 Center Road, Perry, Ohio.

Send comments to The Honorable Lee Lydick, Mayor, Village of Perry, P.O. Box 100, Perry, Ohio 44081.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–17960 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7657]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	Elevation in feet* (NGVD)		Communities affected
	Existing	Modified	
Lateral 1–B/Tributary No. 11:			
Approximately 50 feet upstream of the confluence with Yocona-Spybuck Drainage Canal	None	*205	City of Forrest City.
Approximately 2,275 feet upstream of Union Pacific Railroad	*266	*263	Unincorporated Areas.
Spybuck Drainage Canal:			
Approximately 1,160 feet downstream of Woodroe Holeman Road	None	*216	City of Forrest City.
Approximately 2,300 feet upstream of Commerce Drive	None	*238	Unincorporated Areas.
Tributary No. 1:			
Approximately 975 feet downstream of Woodroe Holeman Road	None	*216	City of Forrest City.
Approximately 2,470 feet upstream of County Highway 213	None	*238	Unincorporated Areas.
Tributary No. 4:			
At the confluence with Tributary No. 5	None	*222	City of Forrest City.
Approximately 60 feet upstream of Dawson Road	None	*243	Unincorporated Areas.
Tributary No. 5:			
Approximately 2,090 feet downstream of County Highway 231	None	*218	City of Forrest City.
Approximately 350 feet upstream of Entergy Drive	None	*239	Unincorporated Areas.
Tributary No. 6:			
Approximately 1,000 feet downstream of County Highway 205	None	*221	City of Forrest City.
Approximately 5,330 feet upstream of County Highway 205	None	*239	Unincorporated Areas.
Tributary No. 7:			
Approximately 1,000 feet downstream of County Highway 205	None	*221	City of Forrest City.
Approximately 1,075 feet upstream of Turner Circle	None	*229	Unincorporated Areas.

Source of flooding and location of referenced elevation	Elevation in feet* (NGVD)		Communities affected
	Existing	Modified	
Tributary No. 10:			
At the confluence with Yocona-Spybuck Drainage Canal (MD–1)	*219	*217	City of Forrest City.
Approximately 5,010 feet upstream of County Highway 202/Union Pacific Railroad	None	*221	Unincorporated Areas.
Tributary No. 12:			
At the confluence with Lateral 1–B (Tributary No. 11)	None	*213	Unincorporated Areas.
Approximately 4,035 feet upstream of County Highway 808	None	*221	
Tributary No. 13:			
At the confluence with Tributary No. 12	None	*214	City of Forrest City.
Approximately 4,500 feet upstream of the confluence with Tributary No. 12	None	*222	Unincorporated Areas.
Tributary No. 14:			
At the confluence with Tributary No. 12	None	*215	City of Forrest City.
Approximately 100 feet upstream of Yocona Road	None	*216	Unincorporated Areas.
Tributary No. 16:			
At the confluence with Tributary No. 12	None	*217	City of Forrest City.
Approximately 2,920 feet upstream of Yocona Road	None	*224	Unincorporated Areas.
Tributary No. 17:			
Approximately 260 feet downstream of the confluence of Tributary No. 18	None	*219	Unincorporated Areas.
Approximately 4,150 feet upstream of County Highway 814	None	*229	
Tributary No. 18:			
At the confluence with Tributary No. 17	None	*220	Unincorporated Areas.
Approximately 2,850 feet upstream of the confluence with Tributary No. 17	None	*225	
Tributary No. 19:			
At the confluence with Tributary No. 17	None	*223	Unincorporated Areas.
Approximately 2,390 feet upstream of the confluence with Tributary No. 17	None	*226	

ADDRESSES

City of Forrest City

Maps are available for inspection at the City Hall, 224 North Rosser, Forrest City, Arkansas.

Send comments to The Honorable Larry S. Bryant, City Hall, P.O. Box 1074, 224 North Rosser, Forrest City, Arkansas 72335.

St. Francis County (Unincorporated Areas)

Maps are available for inspection at St. Francis County Courthouse, 313 South Izard Street, Forrest City, Arkansas.

Send comments to The Honorable Carl Cisco, Judge, St. Francis County, 313 Izard Street, Forrest City, Arkansas 72335.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–17961 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ07

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Colorado Butterfly Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Colorado butterfly plant (*Gaura neomexicana* ssp. *coloradensis*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 8,486 acres (ac) (3,434 hectares (ha)) along approximately 113.1 stream miles (mi) (182.2 kilometers (km)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Laramie and Platte Counties in Wyoming; Kimball County in Nebraska; and Weld County in Colorado.

DATES: We will accept comments from all interested parties until October 5, 2004. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 20, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor,

U.S. Fish and Wildlife Service, Wyoming Field Office, 4000 Airport Parkway, Cheyenne, Wyoming 82001.

2. You may hand-deliver written comments to our Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to *fw6_cobutterflyplant@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to 307/772–2358.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Wyoming Field Office, 4000 Airport Parkway, Cheyenne, Wyoming, telephone 307/772–2374.

FOR FURTHER INFORMATION CONTACT: Brian Kelly, Field Supervisor, Wyoming Field Office, 4000 Airport Parkway, Cheyenne, Wyoming (telephone 307/772–2374; facsimile 307/772–2358).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Gaura neomexicana* ssp. *coloradensis* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Please submit Internet comments to *fw6_cobutterflyplant@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: *Gaura neomexicana* ssp. *coloradensis*" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Cheyenne Ecological Services Field Office at phone number 307/772–2374. Please note that the Internet address *fw6_cobutterflyplant@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Listed Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 445 species or 36 percent of the 1,244 listed species in the United States under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled

species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

We discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on *Gaura neomexicana* ssp. *coloradensis*, refer to the final listing rule published in the **Federal Register** on October 18, 2000 (65 FR 62302).

Gaura neomexicana ssp. *coloradensis* is a perennial herb that lives vegetatively for several years before bearing fruit once and then dying. *Gaura neomexicana* ssp. *coloradensis* occurs on subirrigated, alluvial (stream deposited) soils on level or slightly sloping floodplains and drainage bottoms at elevations of 1,524–1,951 meters (5,000–6,400 ft). Colonies are often found in low depressions or along bends in wide, active, meandering stream channels a short distance upslope of the actual channel. The plant requires early- to mid-succession riparian (river bank) habitat. *Gaura neomexicana* ssp. *coloradensis* is an early successional plant (although probably not a pioneer) adapted to use stream channel sites that are periodically disturbed. Historically, flooding was probably the main cause of disturbances in the plant's habitat, although wildfire and grazing by native herbivores also may have been important.

Little is known about the historical distribution of *Gaura neomexicana* ssp. *coloradensis*. Prior to 1984, no extensive documentation of the plant's range had been conducted. In 1979, the total known population size was estimated in the low hundreds (Dorn 1979). Intensive range-wide surveys from 1984 to 1986 resulted in the discovery or confirmation of more than 20 populations in Wyoming, Colorado, and Nebraska, containing approximately 20,000 flowering individuals (Marriott 1987). Additional surveys since 1992 have resulted in the discovery of additional populations in Wyoming and Colorado (Fertig 1994; Floyd 1995b).

Gaura neomexicana ssp. *coloradensis* is distributed throughout its occupied range into patchy groups of subpopulations, some of which are isolated with little or no possibility of interbreeding with other local populations. The spatial structuring of this subspecies is commonly referred to as a metapopulation. Local populations exist on a patch of suitable habitat, and although each has its own, relatively independent population dynamics, the long-term persistence and stability of the metapopulation arise from a balance of population extinctions and colonization to unoccupied patches through dispersal events (Hanski 1989, Olivieri *et al.* 1990, Hastings and Harrison 1994).

Balancing local population extinction with new colonization events is problematic for *Gaura neomexicana* ssp. *coloradensis* since naturally occurring disturbance associated with creation of suitable habitat for colonization, such as seasonal floods, has been largely curtailed by water development and flood control. Consequently, what once may have been a dynamic, but stable, metapopulation, may now be characterized by a series of local populations with a very low probability of colonizing new patches, and little opportunity to replace populations that go extinct. Biological characteristics that may serve to reduce these negative consequences at least in the short-term for *G. n.* ssp. *coloradensis* include seed banks, delay of stage transition from rosette to flowering adults under poor habitat conditions, and self-compatibility. However, the regional persistence of a metapopulation has been shown to be possible only when the rate of colonization exceeds the local rate of extinction (Lande 2002). Consequently, the removal of opportunities for future colonization events poses a significant threat to long-term metapopulation persistence and species viability. This highlights the importance of maintaining viability of as many local populations as possible through conservation.

Most of what is known about *Gaura neomexicana* ssp. *coloradensis* and its conservation is based on surveys and research conducted on populations located on the WAFB in Cheyenne, Wyoming, from 1984 to 2003. Floyd and Ranker (1998) studied three *G. n.* ssp. *coloradensis* subpopulations at WAFB, Crow Creek, Diamond Creek, and Unnamed Drainage, from 1992 to 1994. The purpose of their study was to examine population growth, demographic variability, demographic stage transition dynamics and the probability of population extinction. Results suggested that each of the three subpopulations was not stable but exhibited significant demographic variability both spatially and temporally, and population growth values were not useful parameters to describe long-term population dynamics (Floyd and Ranker 1998).

Annual census of flowering plants at WAFB began in 1986, and continued from 1988 to 2003, within subpopulations located at Crow Creek, Diamond Creek, and Unnamed Drainage. Census summaries provided by Heidel (2004a) based on these data show that subpopulations within these three drainages are characterized by dramatic fluctuations in size.

Most populations of *Gaura neomexicana* ssp. *coloradensis* for which census or demographic data have been collected exhibit substantial demographic uncertainty. Some of the observed temporal variation in subpopulations at WAFB has been correlated with unpredictable environmental factors such as temperature and precipitation (Floyd and Ranker 1998; Laursen and Heidel 2003; and Heidel 2004a), and spatial variation may be attributable, in part, to fine-scale microhabitat differences in light availability or competition with other herbaceous vegetation or noxious weeds (Munk *et al.* 2002; Laursen and Heidel 2003; and Heidel 2004b). Similar factors may be correlated with some of the observed demographic variability in less-well-studied populations throughout the subspecies' range. However, even for the well-studied subpopulations at WAFB, no clear cause-and-effect relationships have been found to explain the observed fluctuations in population numbers, and studies have not accounted for the majority of the observed demographic uncertainty. Demographic uncertainty, or stochasticity, is variability in survival and reproduction of individuals due, at

least in part, to chance or random events (Frankel *et al.* 1995); although some chance events may actually be deterministic factors that are currently not understood (Shaffer 1987).

Some researchers suggest that demographic uncertainty becomes an important hazard only for small populations (in the range of tens to hundreds of individuals). While there is no managerial solution for threats due to stochastic factors, the magnitude of effect of these threats decreases as population size increases (Shaffer 1987; Frankel *et al.* 1995; Lande 2002). Maintaining the maximum number of individuals within each population, and maintaining the maximum number of populations within the *Gaura neomexicana* ssp. *coloradensis* metapopulation as a whole, may be the only means with which to maintain long-term species persistence.

Of the known populations of *Gaura neomexicana* ssp. *coloradensis*, the vast majority occur on private lands managed primarily for agriculture and livestock. Haying and mowing at certain times of the year, water development, land conversion for cultivation, competition with exotic plants, non-selective use of herbicides, and loss of habitat to urban development are the main threats to these populations (Mountain West Environmental Services 1985, Marriott 1987, Fertig 1994).

Because of the small, isolated nature of populations and few numbers present in many of them, the subspecies is much more susceptible to random events such as fires, insect or disease outbreaks, or other unpredictable events that could easily eliminate local populations.

Previous Federal Actions

On October 18, 2000, *Gaura neomexicana* ssp. *coloradensis* was designated as threatened throughout its entire range under the Act (65 FR 62302). On October 4, 2000, the Center for Biological Diversity and the Biodiversity Legal Foundation filed a complaint in the Federal District Court for the District of Colorado concerning our failure to designate critical habitat for the Colorado butterfly plant (*Center for Biological Diversity, et al.* v. *Norton, et al.* (Civ. Action No. 00–D–1980)). On March 19, 2001, the Court approved a settlement agreement requiring us to submit a final critical habitat designation for the Colorado butterfly plant to the **Federal Register** on or before December 31, 2004. For more information on previous Federal actions concerning *G. n.* ssp. *coloradensis*, refer to the final listing rule (65 FR 62302).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. As discussed below, such areas also may be excluded from critical habitat pursuant to section 4(b)(2).

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Critical habitat designations do not signal that habitat outside the designation is unimportant to *Gaura neomexicana* ssp. *coloradensis*. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific and commercial data available in determining areas that contain the physical and biological features that are essential to the conservation of *Gaura neomexicana* ssp. *coloradensis*. This information included data from our files that we used for listing the species; geologic maps, recent biological surveys and reports; information funded by the Air Force and other interested parties, and discussions with botanists.

The long-term probability of the conservation of *Gaura neomexicana* ssp. *coloradensis* is dependent upon the protection of existing populations, and the maintenance of ecologic functions within these sites, including connectivity within and between populations within close geographic proximity to facilitate pollen flow and population expansion. *G. n.* ssp. *coloradensis* is fragmented and patchy in nature and occurs as a metapopulation. The areas we are

proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *G. n.* ssp. *coloradensis.*

Criteria Used To Identify Critical Habitat

As previously stated in the Background section of the final listing rule (65 FR 62302, October 18, 2000), "Thus, of 26 previously known populations, 9 may be extirpated; 3 are probably small, but have not been surveyed since 1992; 4 are still extant, but declining; and 10 are stable or increasing." In our delineation of the critical habitat units, we selected areas to provide for the conservation of *Gaura neomexicana* ssp. *coloradensis* at the eight sites where all previously known subpopulations are known to occur. Much of what is known about the specific physical and biological requirements of *G. n.* ssp. *coloradensis* is described in the Primary Constituent Elements section of this proposed rule.

Our approach to delineating critical habitat units was applied in the following manner:

(1) We obtained records of *Gaura neomexicana* ssp. *coloradensis* distribution compiled by the Wyoming Natural Diversity Database (Wyoming Natural Diversity Database 2004) and from the Colorado Natural Heritage Program (Colorado Natural Heritage Program 1995, 2004). Database records were received in the form of shape files formatted for use in ArcView (Environmental Systems Research, Inc. (ESRI)), a computer GIS program. We created polygons by overlaying current and historic plant locations from shape files on digital topographic maps. In other words, we focused on designating units representative of the known current and historical locations of the plant throughout the geographic range of the subspecies.

(2) We then evaluated plant locations in relation to potentially suitable habitat within drainages on the topographic maps. We followed rough boundaries of suitable habitat from which we could identify potential critical habitat, and then further refined these boundaries using corresponding Service National Wetland Inventory maps. A more refined boundary was then created digitally using a second GIS program, ArcMap (ESRI). This boundary was then evaluated in relation to primary constituent elements and adjacent areas containing suitable hydrologic regimes, soils, and vegetation communities. We avoided land areas identified as not suitable for *G. n.* ssp. *coloradensis, i.e.,* those areas that do not contain primary constituent elements. Such areas were excluded from the refined boundary to the extent that we could identify these areas on the map.

In order to determine the outward extent of the proposed critical habitat, botanists were consulted who had previously conducted field surveys of *Gaura neomexicana* ssp. *coloradensis* and who had a good working knowledge of habitat requirements for the species. Based on the information from botanists, we are using the outward extent of the proposed critical habitat as 300 feet (91 meters) from the center of the stream within a given stream segment.

(3) We eliminated areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of Colorado butterfly plant. We used geographic features (ridge lines, valleys, streams, etc.) or manmade features (roads or obvious land use) that created an obvious boundary for a unit as unit area boundaries.

(4) Critical habitat designations were then described for landowners and the public. We mapped using legal descriptions including township, range, and sections associated with the Public Land Survey System so that private landowners and the public could see the proximity of the designation with where they reside.

The Service is working with, and will continue to work with, the Wyoming Stockgrowers Association, the Wyoming Association of Conservation Districts, the Wyoming Department of Agriculture, the Natural Resources Conservation Service in Wyoming and Nebraska, and the City of Fort Collins in Colorado, to develop conservation agreements with willing landowners to provide for the conservation of *Gaura neomexicana* ssp. *coloradensis.* These agreements will include specific on-the-ground actions to alleviate specific threats including—allowing the Service access to private land to conduct annual monitoring of *G. n.* ssp. *coloradensis* populations to evaluate success of management actions under the agreement; establishing an adaptive management approach to evaluate success of management actions under the agreement; and facilitating the collection of data needed for future recovery of the species. Through cooperation and communication between landowners and the Service, such agreements will provide for the conservation needs of *G. n.* ssp. *coloradensis* above and beyond what would be achievable through the designation of critical habitat on private lands while meeting the needs of individual landowners. Working cooperatively with private landowners to protect habitat for *G. n.* ssp. *coloradensis* through conservation agreements is the Service's preferred approach to protecting the species on private lands. The Service will pursue such agreements to the fullest extent practicable prior to finalizing critical habitat. If, prior to finalizing the designation of critical habitat, the Service determines that the benefits of excluding an area subject to one of these agreements outweigh the benefits of including it, the Service will exclude such from the designation. Currently, one such agreement is in place.

The Service will work with landowners to gain access to private lands to survey for plant populations. Most of these populations have not been surveyed since 1998, earlier in some cases, and some may now be extirpated. The Service is in the process of conducting surveys that will continue through August of 2004. We will further refine the designation based on new information.

We propose to designate critical habitat on lands that we have determined are essential to the conservation of *Gaura neomexicana* ssp. *coloradensis.* These areas have the primary constituent elements described. While the species was known historically from several additional locations in northern Colorado and southeastern Wyoming, these populations are believed to be extirpated (Fertig 1994) and are not included in the proposed designation.

Much of the survey data on which this proposed designation is based represents the number of flowering individuals during one point in time. Because of the annual fluctuation in population size for this species (ranging from 200 percent), and because the number of flowering individuals each year depends upon local environmental factors that vary substantially year to year (*e.g.,* precipitation), it is likely that other individual plants and subpopulations exist but were not identified during previous surveys. This is particularly true for those areas, which contain the primary constituent elements for the species, that occur between subpopulations. Not only are these areas essential to achieving the long-term conservation goal of protecting the maximum number of populations possible, but they are essential in maintaining gene flow between populations via pollen flow to maintain, and potentially increase, local population genetic variation.

In our delineation of the critical habitat units, we selected areas to provide for the conservation of *Gaura neomexicana* ssp. *coloradensis* in all areas where it is known to occur, except WAFB (*see* discussion below on the WAFB's Integrated Natural Resources Management Plan (INRMP)). All units are essential because *G. n.* ssp. *coloradensis* populations exhibit significant demographic uncertainty, contain very low genetic variation, and have very little opportunity to colonize new geographic areas with which to balance local extinction events. We believe the proposed designation is of sufficient size to maintain ecological processes and to minimize secondary impacts resulting from human activities and land management practices occurring in adjacent areas. We mapped the units with a degree of precision commensurate with the available information, the size of the unit, and time allotted to complete this proposal. We anticipate that the boundaries of the units may be refined based on additional information received during the comment period and after surveys are completed in August of this year.

Although we are not proposing sites other than where populations are known to occur, we do not mean to imply that habitat outside the designation is unimportant or may not be required for recovery of the species. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to the applicable prohibitions of section 9 of the Act and the regulatory protections afforded by the section 7(a)(2) jeopardy standard. In addition, for such populations discovered on private lands, the Service will consider entering into conservation agreements with the landowners similar to the ones contemplated for currently known populations.

We often exclude non-Federal public lands and private lands that are covered by an existing operative Habitat Conservation Plan (HCP) and executed Implementation Agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. There are no HCPs in place for *Gaura neomexicana* ssp. *coloradensis* at this time. Department of Defense lands with an approved INRMP also are excluded from critical habitat. We have approved the INRMP for WAFB, which addresses conservation needs of *G. n.* ssp. *coloradensis*. Consequently, we did not consider habitat supporting populations located on WAFB for proposed designation as critical habitat.

Designating critical habitat is one mechanism for providing habitat protection for *Gaura neomexicana* ssp. *coloradensis* populations. However, the benefits of protecting extant populations through conservation agreements, by partnering with private landowners on whose property populations occur, may well outweigh the benefits of designating critical habitat for this species. Greater protection results from conservation agreements because these agreements address the specific types of actions (*e.g.*, indiscriminate application of herbicides; overgrazing; timing of hay cutting) undertaken by private landowners that may adversely impact *G. n.* ssp. *coloradensis* or its habitat and that would not involve a Federal nexus subject to consultation under section 7(a)(2) of the Act. A review of the complete consultation history of *G. n.* ssp. *coloradensis* has revealed that none of the actions undertaken on private lands resulting in these threats to the species have ever required consultation under the Act.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to—space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for *Gaura neomexicana* ssp. *coloradensis* include those habitat components essential for the biological needs of rosette growth and development, flower production, pollination, seed set and fruit production, and genetic exchange. *G. n.* ssp. *coloradensis* typically lives and reproduces on subirrigated, stream-deposited soils on level or slightly sloping floodplains and drainage bottoms at elevations of 5,000 to 6,400 feet (1,524 to 1,951 meters). Most colonies are found in low depressions or along bends in wide, active, meandering stream channels a short distance upslope of the active channel, and may occur at the base of alluvial ridges at the interface between riparian meadows and drier grasslands (Fertig 2001). Average annual precipitation within its range is 13 to 16 in (33 to 41 cm) primarily in the form of rainfall (Fertig 2000). Soils in *G. n.* ssp. *coloradensis* habitat are derived from conglomerates, sandstones, and tufaceous mudstones and siltstones (*i.e.*, derived from spongy, porous limestone formed by the precipitation of calcite from the water of streams and springs) of the Tertiary White River, Arikaree, and Ogallala formations (Fertig 2000).

Ecological processes that create and maintain *Gaura neomexicana* ssp. *coloradensis* habitat are important primary constituent elements. Essential habitat components to *G. n.* ssp. *coloradensis* occur in areas where past and present hydrological and geological processes have created streams, floodplains, and conditions supporting favorable plant communities. Historically, *G. n.* ssp. *coloradensis* habitat has been maintained along streams by natural flooding cycles that periodically scour riparian vegetation, rework stream channels and floodplains, and redistribute sediments to create vegetation patterns favorable to *G. n.* ssp. *coloradensis*. *G. n.* ssp. *coloradensis* commonly occurs in communities including *Agrostis stolonifera* (redtop) and *Poa pratensis* (Kentucky bluegrass) on wetter sites, or *Glycyrrhiza lepidota* (wild licorice), *Cirsium flodmanii* (Flodman's thistle), *Grindelia squarrosa* (curlytop gumweed), and *Equisetum laevigatum* (smooth scouring rush) on drier sites (Fertig 1994). Both of these habitat types are usually intermediate in moisture between wet, streamside communities dominated by *Carex* spp. (sedges), *Juncus* spp. (rushes), and *Typha* spp. (cattails), and dry upland shortgrass prairie. Where hydrological flows are controlled to preclude a natural pattern of habitat development, and other forms of disturbance are curtailed or eliminated, a less favorable mature successional stage of vegetation will develop, resulting in the loss of many of these plant associates.

Hydrological processes, and their importance in maintaining the moisture regime of habitat preferred by *Gaura neomexicana* ssp. *coloradensis*, also have an important direct effect on seed germination and seedling recruitment. Analysis by Heidel (2004a) demonstrated a significant positive correlation between census number and net growing season precipitation 2 years

prior to census. Important direct effects of moisture on *G. n.* ssp. *coloradensis* establishment and recruitment also have been demonstrated by the appearance of high numbers of new vegetative plants within 27 days after a 100–year flood event at WAFB on August 1, 1985 (Rocky Mountain Heritage Task Force 1987 cited in Heidel 2004a).

The long-term availability of favorable *Gaura neomexicana* ssp. *coloradensis* habitat also depends on impacts of drought, fires, windstorms, herbivory, and other natural events. *G. n.* ssp. *coloradensis* requires open, early- to mid-succession riparian habitat experiencing periodic disturbance. Periodic disturbance is necessary to control competing vegetation, and to create open, bare ground for seedling establishment (Fertig 2001). *Salix exigua* (coyote willow) and *Cirsium arvense* (Canada thistle) may become locally dominant in *G. n.* ssp. *coloradensis* habitat that is not periodically flooded or otherwise disturbed, resulting in decline of the species. Research has demonstrated negative impacts on *G. n.* ssp. *coloradensis* populations from competition with locally abundant noxious weeds, forbs, and grasses (Munk *et al.* 2002, Heidel 2004b).

Based on our knowledge to date, the primary constituent elements for *Gaura neomexicana* ssp. *coloradensis* consist of, but are not limited to:

(1) Subirrigated, alluvial soils on level or low-gradient floodplains and drainage bottoms at elevations of 5,000 to 6,400 feet (1,524 to 1,951 meters).

(2) A mesic moisture regime, intermediate in moisture between wet, streamside communities dominated by sedges, rushes, and cattails, and dry upland shortgrass prairie.

(3) Early- to mid-succession riparian (streambank or riverbank) plant communities that are open and without dense or overgrown vegetation (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreation trails, and urban/wildland interfaces).

(4) Hydrological and geological conditions that serve to create and maintain stream channels, floodplains, floodplain benches, and wet meadows that support patterns of plant communities associated with *G. n.* ssp. *coloradensis*.

Existing features and structures within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and other features not containing any of the primary constituent elements are not considered critical habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. For *Gaura neomexicana* ssp. *coloradensis* special management considerations include maintaining surface or subsurface water flows that provide the essential hydrological regime that supports the species; appropriate constraints on application of herbicides used to control noxious weeds; preventing habitat degradation caused by plant community succession; and preventing harmful habitat fragmentation from residential and urban development that detrimentally affects plant-pollinator interactions, leads to a decline in species reproduction, and increases susceptibility to non-native plant species. While excessive grazing can lead to changes in essential habitat conditions (*e.g.*, increases in soil temperature resulting in loss of moisture, decreases in plant cover, and increases in non-native species), managing for appropriate levels of grazing provides an important management tool with which to maintain open habitat needed by the species.

Proposed Critical Habitat Designation

We are proposing eight units as critical habitat for *Gaura neomexicana* ssp. *coloradensis*. The critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of *G. n.* ssp. *coloradensis* that may require special management. The eight proposed units are: (1) Tepee Ring Creek in Wyoming; (2) Bear Creek East in Wyoming; (3) Bear Creek West in Wyoming; (4) Little Bear Creek/Horse Creek in Wyoming; (5) Lodgepole Creek West in Wyoming; (6) Lodgepole Creek East in Wyoming and Nebraska; (7) Borie in Wyoming; and (8) Meadow Springs Ranch in Colorado.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR GAURA NEOMEXICANA SSP. COLORADENSIS

Critical habitat unit	Acres	Hectares	Stream miles
1. Tepee Ring Creek	107	43	1.5 (2.4 km)
2. Bear Creek East	801	324	11.2 (18 km)
3. Bear Creek West	500	202	7.3 (11.8 km)
4. Little Bear Creek/Horse Creek	2,480	1,004	36.1 (58.1 km)
5. Lodgepole Creek West	1,067	432	15.0 (24.2 km)
6. Lodgepole Creek East	1,683	681	24.8 (40 km)
7. Borie	1,141	462	17.2 (27.7 km)
8. Meadow Springs Ranch	707	286	N/A
Total	8,486	3,434	113.1 (182 km)

We present brief descriptions of all units, and reasons why they are essential for the conservation of *Gaura neomexicana* ssp. *coloradensis*, below.

Unit 1: Tepee Ring Creek

Unit 1 consists of 107 ac (43 ha) along 1.5 stream mi (2.4 km) of Tepee Ring Creek in Platte County, Wyoming, and is under private ownership. One subpopulation of *Gaura neomexicana* ssp. *coloradensis* has been found along Tepee Ring Creek in the lower SE corner of T21N R68W Section 2. Habitat occupied by *G. n.* ssp. *coloradensis* is moist meadow along the stream. Habitat along this stream reach throughout this unit is primarily identified as PEMA (palustrine emergent temporarily flooded) wetland intermixed with PEMC (palustrine emergent seasonally flooded) wetland, according to National Wetlands Inventory terminology (U.S. Fish and Wildlife Service 1993). Habitat containing primary constituent elements extends throughout this entire reach, and it is likely that *G. n.* ssp.

coloradensis occurs in Section 1 downstream of the subpopulation in Section 2. This unit is essential to the conservation of the species because it represents the northernmost extent of the subspecies' known range of occurrence, separated by approximately 25 mi (40.3 km) from the closest population, and likely contains unique genetic variability not found in other populations.

Unit 2: Bear Creek East

Unit 2 consists of 801 ac (324 ha) along 11.2 stream mi (18 km) of the South Fork of the Bear Creek and the Bear Creek in Laramie County, Wyoming. Colonies of *Gaura neomexicana* ssp. *coloradensis* have been found throughout the South Fork Bear Creek from T19N67W Section 25, extending northeast approximately 13 mi (21 km) to the far eastern edge of T19N66W Section 11. This unit is primarily under private ownership but includes some Wyoming State lands. Three main habitat types occur in this unit—(1) hay field adjacent to streams; (2) upper stream banks with snowberry; and (3) willow thickets (WNDD 2004). Much of the habitat in this unit is mowed for hay. Habitat within this stream reach is primarily identified as PEMC intermixed with PEMA. The primary constituent elements extend throughout this entire reach in which several subpopulations of *G. n.* ssp. *coloradensis* have been found. While there are no known locations for *G. n.* ssp. *coloradensis* within Section 36, it is likely that subpopulations occur there because it is adjacent to, and just upstream of, Section 25 to the north, where a subpopulation occurs very close to the section border. Proposed critical habitat on the northern and eastern end of the unit was extended to include T19N R66W Section 12 because: (a) suitable habitat with primary constituent elements continues throughout Section 12; (b) there is a subpopulation of plants at the eastern end of Section 11 very close to Section 12 from which colonization is likely to have occurred; and (c) Section 12 is downstream of several other populations serving as likely seed sources. This unit has historically supported a number of *G. n.* ssp. *coloradensis* populations in a variety of habitat types, and is located at the furthest point downstream within the Bear Creek drainage. Disconnected from other population gene pools, subpopulations within this unit likely contain genotypes unique to this drainage. This unit is essential to the overall objective of maintaining the maximum number of populations possible for future species conservation.

Unit 3: Bear Creek West

Unit 3 consists of three stream reaches encompassing a total of 500 ac (202 ha) along 7.3 stream mi (11.8 km) within the Bear Creek drainage in Laramie County, Wyoming. This unit is primarily under private ownership, but includes some Wyoming State lands.

Reach 1: Habitat within this reach is semi-moist meadows on flat benches and streambanks along an intermittent stream. Plants are most abundant in areas with low thistle density and heavily browsed willow, and are absent from adjacent, ungrazed areas with dense willow thickets (WNDD 2004). Subpopulations of *Gaura neomexicana* ssp. *coloradensis* have been found throughout this reach in T18N R68W Sections 8 and 9. Habitat is primarily PEMC containing primary constituent elements and extends through Sections 8, 9, and 4 to the northwest. Proposed critical habitat on the northern and eastern end of the unit was extended to include Section 4 because: (a) Suitable habitat with primary constituent elements continues throughout Section 4; (b) there is a subpopulation of plants at the northern end of Section 9 very close to Section 4; and (c) Section 4 is downstream of 8 and 9 and it is likely that these upstream subpopulations have already dispersed seeds into Section 4. This reach is an important location that has always supported a large population with good reproduction, and this site has remained in very good condition with few impacts compared with other occupied sites.

Reach 2: Habitat within this reach consists of hummocky banks of loamy clay soil and gravelly, sloping terraces in semi-moist, closely grazed *Poa pratensis* (Kentucky bluegrass) / *Elymus spp.* (wild rye) streamside meadow at the edge of dense *Carex aquatilis* (Nebraska sedge) / *Juncus balticus* (Baltic rush) community (WNDD 2004). It is likely that grazing maintains open habitat for *Gaura neomexicana* ssp. *coloradensis* (WNDD 2004). Subpopulations of *G. n.* ssp. *coloradensis* have been found throughout this reach in T18N R68W Sections 16 and 17. Habitat is primarily PEMC containing primary constituent elements and extends through both sections. Nimmo Reservoir in Section 15, adjacent to Section 16, is likely a barrier to seed dispersal downstream. Therefore, proposed critical habitat was not extended further. This location represents the uppermost elevation within the species' known range of occurrence. Historically it has supported a large population located in habitat with few threats to its good condition.

Reach 3: Habitat within this reach consists of three types: (1) Seasonally wet *Juncus balticus / Agrostis stolonifera* (redtop) / *Poa pratensis* community on subirrigated gravelly-sandy soil in low depressions a distance from the current stream channel; (2) streambank terraces of dark-brown loamy clay in dense *Helianthus nuttallii* (Nuttall's sunflower) / *Solidago canadensis* (Canada goldenrod) / *Phleum pratense* (timothy) grass community; and (3) grassy terrace dominated by *Agrostis stolonifera, Poa pratensis, Elymus smithii* (wild rye), and *Melilotus albus* (white sweetclover) on brown clay-loam (WNDD 2004). Populations are small and inside fenced areas where bulls are kept, but much more common in surrounding upland sites where grazing is moderate and willow and thistle are not well established; the plants are less abundant where growth of snowberry is thick (WNDD 2004). The population within this reach has been growing in years leading up to the last survey date and is located in habitat in good condition.

One subpopulation of *Gaura neomexicana* ssp. *coloradensis* has been found on the eastern edge of T18N R68W Section 21. Habitat is primarily PEMA containing primary constituent elements and extends from the middle of Section 21 through the adjacent Section 22 to the east. There is a natural break in habitat approximately in the center of Section 21 at which point the PEMA habitat changes to scrub-shrub and continues upstream (to the southwest) through the remainder of Section 21. We did not propose critical habitat beyond this natural break. Proposed critical habitat includes Section 22 to the east because: (a) Suitable habitat with primary constituent elements continues throughout Section 22; (b) the subpopulation of plants in Section 21 is very close to the border of Section 22; and (c) Section 22 is downstream of 21 and it is likely that this upstream subpopulation has dispersed seeds into Section 22.

Unit 4: Little Bear Creek/Horse Creek

Unit 4 consists of two stream reaches encompassing a total of 2,480 ac (1,004 ha) along 36.1 stream mi (58.1 km) within the Little Bear Creek and Horse Creek drainages in Laramie County, Wyoming. This unit is primarily under private ownership, but includes some Wyoming State lands.

Reach 1: Habitat for *Gaura neomexicana* ssp. *coloradensis* within

this reach occurs in four main types: (1) Moist hay meadows; (2) wild licorice thickets in sandy, dry stream channels; (3) depressions in alluvial meadows away from the main stream channel; and (4) moist meadows and streambanks on alluvium derived from the Ogallala Formation. Plants appear to be more abundant in hay meadow sites than other habitat types (WNDD 2004). Subpopulations of *G. n.* ssp. *coloradensis* have been found throughout Little Bear Creek from the southwest end of Unit 4 in T18N R68W Section 36, extending northeast approximately 12 stream mi (19 km) to the southwestern corner of T18N R67W Section 23. It is likely that subpopulations occur within Section 35, the section adjacent to, and just upstream of, Section 36 on Little Bear Creek, where a subpopulation resides very close to the section border. Subpopulations also have been found along the Paulson Branch of Little Bear Creek from T17N R68W Section 2 on the southwest end of Unit 4, extending northwest approximately 5 stream mi (8 km) to Section 31 where it merges with Little Bear Creek. Habitat throughout Little Bear Creek and the Paulson Branch stream reaches is primarily identified as PEMC intermixed with PEMA, containing primary constituent elements throughout. Proposed critical habitat on the northern and eastern end of the unit was extended to include all of Section 23 because suitable habitat with primary constituent elements continues throughout this section and it is likely that the subpopulation in the southwestern corner of this section has dispersed seeds into the remainder of this section. This reach has supported a large number of subpopulations with a moderate to large number of plants over the years. Because this reach is reproductively isolated from any others, it likely harbors genotypes unique to the species that could be important to future species persistence.

Reach 2: Subpopulations occur in several habitat types: (a) Open meadow on the edge of a marshy, spring-fed pond; (b) subirrigated meadows and hay fields in a broad alluvial valley among clumps of *Poa pratensis, Equisetum spp.* (horsetail), and *Carex spp.* (sedges); and (c) *Solidago spp.* (goldenrod) / *Glycyrrhiza lepidota* (wild licorice) / *Schizachyrium scoparium* (little bluestem) community near the creek; and (d) on the edges of willow thickets and semi-moist meadows, extending into a right-of-way. The species is absent from wet sites dominated by *Glyceria spp.* (mannagrass) and *Carex rostrata* (beaked sedge) and from stream banks where vegetation is overgrown by willow, thistle, sunflower and goldenrod from succession. Land within this reach is used extensively for hay production. Subpopulations located downstream of Brunyansky Draw are large and occupy habitat in good condition where threats are low (WNDD 2004).

Subpopulations of *Gaura neomexicana* ssp. *coloradensis* have been found along Horse Creek from T17N R67W Section 7 on the west end of this reach, for approximately 4 mi (6 km) to the east into Section 3. There is an approximate 3-mi (5-km) stretch encompassing Sections 2, 1, and 6, in which plants have not been found; however, continuing downstream to the east subpopulations have been found in the following 3 mi (5 km) in T17N R66W Sections 5, 4, and 3, as well as in Section 10 adjacent (to the south) to Section 3. Habitat throughout the majority of the reach is PEMC and PEMA, intermixed with scrub-shrub through Sections 2, 1, and 6. It is likely that subpopulations occur within Sections 2, 1, and 6 since there are several subpopulations both upstream and downstream of these sections, and habitat with primary constituent elements also is present; therefore, these sections were included in the critical habitat proposal. Including these sections also is important to maintain connection (*i.e.*, gene flow in terms of pollen dispersal) between subpopulations upstream and downstream.

Proposed critical habitat was not extended beyond the center of Section 10 on the east end of the reach because primary constituent elements are no longer present because of changes in habitat. Subpopulations have been found in Section 16 along a tributary to Horse Creek. It is likely that other subpopulations of *Gaura neomexicana* ssp. *coloradensis* also occur downstream of Section 16 closer to its point of merging with Horse Creek, since habitat and primary constituent elements are present throughout this tributary. Horse Creek is important to the species because it harbors several subpopulations throughout many miles of habitat, contributing considerably to the objective of maximizing the number of individuals and populations for species conservation.

Unit 5: Lodgepole Creek West

Unit 5 consists of 1,067 ac (432 ha) along 15 stream mi (24.2 km) of Lodgepole Creek in Laramie County, Wyoming. This unit is primarily under private ownership, but includes some Wyoming State lands. Occupied habitat within this unit includes moist meadows, streambanks, and hayfields and pastures along the creek, primarily areas where the land slopes gently down to the creek, creating flat, alluvial deposits below the surrounding hills (WNDD 2004). Some sites are becoming choked with willows and other vegetation. Ungrazed habitat west of Interstate 25 is being invaded by *Salix exigua* (sandbar willow) and other forbs. Subpopulations of *Gaura neomexicana* ssp. *coloradensis* have been found along Lodgepole Creek from T16N 68W Section 24 on the western edge of this unit, extending 12 stream mi (19 km) east to T15N R66W Section 3. Habitat throughout this stream reach is primarily identified as PEMC intermixed with PEMA, containing primary constituent elements throughout its entirety. Therefore, it is likely that the plant also occurs in Sections 27 and 28 which occur in the middle of the reach, adjacent to sections upstream and downstream in which subpopulations have been found, and in Section 2 on the eastern end just downstream of a subpopulation in the adjacent Section 3. This unit has supported a large number of small, and a few large, subpopulations over the years in a variety of habitat types and land management practices. The number of subpopulations within the variety of habitat may represent a number of locally selected genotypes existing under unique conditions, providing an important contribution to the long-term conservation of the species.

Unit 6: Lodgepole Creek East

Unit 6 consists of two stream reaches encompassing a total of 1,683 ac (681 ha) along 24.8 stream mi (40 km) of Lodgepole Creek in Laramie County, Wyoming, and in Kimball County, Nebraska. This unit is primarily under private ownership with some Wyoming State lands.

Reach 1: Habitat occupied by subpopulations within this reach is sandy and silty loam alluvium along the creek in mowed and grazed hay fields and horse pastures. The area is managed for livestock grazing and hay production, mowed late in the season and used for winter pasture. The largest subpopulation was found on a heavily grazed meadow. Although little impact from exotic plant species was found in 1997, spraying herbicides for weed control is likely the greatest threat to habitat at this site (WNDD 2004).

Subpopulations of *Gaura neomexicana* ssp. *coloradensis* have been found along Lodgepole Creek from Thompson Reservoir Number 2 in T14N

R62W Section 4 on the eastern edge of this unit, extending approximately 13 mi (21 km) west to T15N R64W Section 27 on the reach's western edge. Habitat throughout this stream reach is primarily identified as PEMC with sparse amounts of PEMA, containing primary constituent elements throughout its entirety. The only section in which subpopulations have not been located is T15N 63W Section 28, approximately in the middle of the reach. Because this section contains primary constituent elements and populations occur both upstream and downstream, it is likely that the plant also occurs here. A natural break in habitat type occurs within the westernmost Section 27, beyond which primary constituent elements are no longer found and subpopulations have not been located, providing a logical western boundary for proposed critical habitat designation. On the eastern boundary of this reach, subpopulations have been found 0.5 mi (0.8 km) upstream of Thompson Reservoir Number 2, and, because this portion of the reach also contains primary constituent elements, plants likely occur throughout this portion of Section 4 as well. Subpopulations have not been found downstream of the reservoir, which provides a natural eastern boundary for the proposed critical habitat. This reach supports some of the largest populations surveyed, on some of the best habitat with the fewest impacts.

Reach 2: Habitat within this reach is described as hay meadows with silty loam alluvium along the creek (WNDD 2004). The site is mowed for hay, sprayed for Canada thistle, and used for winter grazing. Subpopulations of *Gaura neomexicana* ssp. *coloradensis* have been found along Lodgepole Creek from T14N R58W Section 8 in western Nebraska, extending west approximately 4.4 mi (7.1 km) to T14N 60W Section 10 in Wyoming. One subpopulation was found along Spring Creek approximately 0.75 mi (1.2 km) upstream of its confluence with Lodgepole Creek in Section 10. Habitat throughout the entire reach is primarily identified as PEMA intermixed with PEMC, containing primary constituent elements throughout. It is likely that the plant occurs throughout Section 8 in Nebraska, just downstream of subpopulations found within the western portion of this section. Similar to Reach 1, this reach supports some of the larger populations located on some of the best habitat.

Unit 7: Borie

Unit 7 consists of three stream reaches encompassing a total of 1,141 ac (462 ha) along 17.2 stream mi (27.7 km) along Diamond Creek, Spring Creek, and Lone Tree Creek in Laramie County, Wyoming. This unit is primarily under private ownership, with some Wyoming State lands and lands owned by the city of Cheyenne, Wyoming.

Reach 1: Habitat within this reach is described as silty loam alluvium along Diamond Creek and a small reservoir in a residential greenbelt, hayfields, and pastures (WNDD 2004). This site is in close proximity to a number of roads, a dam, and a housing subdivision, and is subject to livestock grazing. This population is confluent with another population downstream along Diamond Creek on WAFB. Hay fields are intensively plowed and fertilized, and herbicide has been used in the greenbelt to help control a serious thistle problem. Some plant mortality has been observed due to herbicide spraying. Subpopulations of *Gaura neomexicana* ssp. *coloradensis* have been found along Diamond Creek from the eastern boundary of this reach within T14N R67W Section 33, adjacent to WAFB, approximately 3.5 mi (5.6 km) southwest to T13N R67W Section 6. Subpopulations also have been found along smaller, unnamed tributaries to Diamond Creek from the eastern edge of T14N 67W Section 32 approximately 2 mi (3 km) upstream within several small tributaries in Section 31 and T13N R67W Section 6. Habitat throughout this entire reach is PEMC intermixed with PEMA, containing primary constituent elements throughout. Section boundaries on the western edge of this reach provide easily identifiable boundaries, as does WAFB on the eastern edge. This reach supports a large number of plants within several subpopulations, likely harboring considerable genetic variation contributing to the long-term conservation of this species.

Reach 2: Habitat within this reach is described as the edge of a field mowed for hay (WNDD 2004). One subpopulation of *Gaura neomexicana* ssp. *coloradensis* has been found along Spring Creek within T13N R67W Section 18 along the border with Section 17 to the east. Habitat throughout both sections is PEMC intermixed with PEMA, containing primary constituent elements throughout. Therefore, it is likely that plants occur within habitat containing primary constituent elements upstream of the known subpopulation within Section 18, as well downstream of the known subpopulation and extend eastward into Section 17. This is the only population within this stream reach, and may harbor locally adapted genotypes important to the long-term conservation of the species.

Reach 3: The habitat within this reach is described as marginal within a meadow that is grazed, and includes an area by a road crossing that is sprayed for weed control (WNDD 2004). Subpopulations of *Gaura neomexicana* ssp. *coloradensis* have been found along Lone Tree Creek, from the northwest corner of T13N R67W Section 31, to 5 km (3 mi) upstream to T13N R68W Section 26. Habitat within this reach is PEMC, containing primary constituent elements throughout. Section lines provide a readily identifiable boundary for proposed critical habitat on the western edge of this reach. Habitat containing primary constituent elements along Lone Tree Creek extends downstream to the confluence with Goose Creek within Section 31, and it is likely that plants occupy this reach or may do so in the future. The confluence with Goose Creek provides a readily identifiable boundary for proposed critical habitat on the eastern edge of this reach. Little is known about this subpopulation that was last surveyed over two decades ago. However, it is the only population within this creek drainage and occurs at the southernmost point of the plant's distribution within Wyoming. It is likely that genetic exchange has not occurred with other populations, and, therefore, that this population harbors some unique, locally adapted genotypes that may be important to the species' persistence.

Unit 8: Meadow Springs Ranch (Colorado)

Unit 8 consists of 707 ac (286 ha) within a wet meadow supported by groundwater within the Meadow Springs Ranch in Weld County, Colorado, under ownership of the City of Fort Collins, Colorado. Part of the ranch is used for sewage sludge treatment, and part is used for livestock grazing by a lease holder. Colonies of plants have been found throughout the grazed, subirrigated wetland meadow. Several small groups of *Gaura neomexicana* ssp. *coloradensis* have been found on Meadow Springs Ranch (T11N R67W Section 19), approximately 0.5 mi (0.8 km) south of Exit #293 on the east frontage road off of Interstate 25. This population occurs approximately 8 mi (13 km) from the southernmost population within Wyoming. This geographically and reproductively isolated population represents the only known naturally-

occurring population in Colorado. Therefore, this population represents a unique group of subpopulations at the periphery of the species' range, and this area is considered essential to the conservation of the species.

Land Ownership

The vast majority, approximately 90 percent, of proposed critical habitat is in private ownership. The private lands are primarily used for grazing and agriculture. Additionally there are small scattered tracts of State, county and city lands.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434), the court found our definition of adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect *Gaura neomexicana* ssp. *coloradensis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), also will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to *Gaura neomexicana* ssp. *coloradensis*. We note that such activities also may jeopardize the continued existence of the species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Licensing of construction of communication sites by the Federal Communications Commission;

(6) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency;

(7) Permitting of natural gas pipeline rights-of-way by the Federal Energy Regulatory Commission; and,

(8) Management and research activities undertaken on the WAFB by the U.S. Department of Defense.

We consider all critical habitat units to be occupied by the species based on the most recent survey data collected for populations of *Gaura neomexicana* ssp. *coloradensis*. To ensure that their actions do not jeopardize the continued existence of the species, Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action.

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Endangered Species Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Section 318 of fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136) amended section 4 of the Act. This provision prohibits us from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if we determine in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

As described above, we identified habitat essential for the conservation of *Gaura neomexicana* ssp. *coloradensis* in Laramie and Platte Counties in Wyoming; Kimball County in Nebraska; and Weld County in Colorado. We have examined the INRMP for the WAFB to determine coverage for *G. n.* ssp. *coloradensis*. The INRMP identifies management issues related to conservation and enhancement of *G. n.* ssp. *coloradensis* and identifies goals and objectives that involve the protection of populations and habitat for this species. Some objectives for achieving those goals include: continue to participate in, and encourage development of, Cooperative Agreements and Memorandum of Understanding activities with Federal, State, and local government and support agencies; promote and support the scientific study and investigation of federally listed species management, conservation, and recovery; restrict public access in existing and potential habitat areas; and increase public education of Federally listed species through management actions, the WAFB Watchable Wildlife Program, and a Prairie Ecosystem Education Center (WAFB 2001). Based on the beneficial measures for *G. n.* ssp. *coloradensis* contained in the INRMP for WAFB, we have not included this area in the proposed designation of critical habitat for *Gaura neomexicana* ssp. *coloradensis* pursuant section 4(a)(3) of the Act. We will continue to work cooperatively with the Department of the Air Force to assist the WAFB in implementing and refining the programmatic recommendations contained in this plan that provide benefits to *Gaura neomexicana* ssp. *coloradensis*. The non-inclusion of WAFB demonstrates the important contributions that approved INRMPs have to the conservation of the species. As with HCP exclusions, a related benefit of excluding Department of Defense lands with approved INRMPs is to encourage continued development of partnerships with other stakeholders, including States, local governments, conservation organizations, and private landowners to develop adequate management plans that conserve and protect *Gaura neomexicana* ssp. *coloradensis* habitat. We found the INRMP provides benefits for *Gaura neomexicana* ssp. *coloradensis*.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated and revised on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas that are subsequently designated in a final rule. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or that we have excluded pursuant to section 4(b)(2) include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative HCPs that cover the species, (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs), (3) Tribal conservation plans that cover the species, (4) State conservation plans that cover the species, and (5) National Wildlife Refuge System Comprehensive Conservation Plans. Currently, no legally operative or draft HCPs, Tribal conservation plans, State conservation plans, or National Wildlife Refuge System Comprehensive Conservation Plans cover *Gaura neomexicana* ssp. *coloradensis*.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for *Gaura neomexicana* ssp. *coloradensis* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://mountainprairie.fws.gov/species/plants/cobutterfly/index.htm*, or by contacting

the Wyoming Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

This document has not been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. The OMB makes the final determination of significance under Executive Order 12866. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 30 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Gaura neomexicana* ssp. *coloradensis* is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program

under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. A Small Government Agency Plan is not required. State, city and county lands comprise less than 10 percent of the total proposed designation; the other 90 percent is in private ownership. Small governments will not be affected at all unless they proposed an action requiring Federal funds, permits or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that such activity is not likely to jeopardize the species, and no further regulatory impacts from this proposed designation of critical habitat are anticipated. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of *Gaura neomexicana* ssp. *coloradensis*. Because there is no prohibition of take for this species, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the proposed critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs. Owners of areas that are included in the designated critical habitat will continue to have opportunity to use their property in ways consistent with the survival of *G. n.* ssp. *coloradensis*.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Wyoming, Colorado, and Nebraska. The designation of critical habitat in areas currently occupied by *Gaura neomexicana* ssp. *coloradensis* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Gaura neomexicana* ssp. *coloradensis*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of *Gaura neomexicana* ssp. *coloradensis*, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Government-to-Government Relationship With Tribes

In accordance with the President Clinton's memorandum of April 29,

1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally-recognized Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of *Gaura neomexicana* ssp. *coloradensis*. Consequently, we have not proposed the designation of critical habitat on Tribal lands and have not undertaken consultation with any federally-recognized Tribes.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Wyoming Field Office (*see* **ADDRESSES** section).

Author

The primary author of this package is Tyler Abbott (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entry for *Gaura neomexicana* ssp. *coloradensis* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Gaura neomexicana ssp. *coloradensis*.	Colorado butterfly plant.	U.S.A. (WY, NE, CO).	Onagraceae-Evening Primrose.	T	704	17.96(a)	NA
*	*	*	*	*	*	*	

3. In § 17.96(a), amend paragraph (a) by adding an entry for *Gaura neomexicana* ssp. *coloradensis* in alphabetical order under Family Onagraceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Onagraceae: *Gaura neomexicana* ssp. *coloradensis* (Colorado butterfly plant)

(1) Critical habitat units are depicted for Laramie County, Wyoming; Kimball County, Nebraska; and Weld County, Colorado, on the maps below.

(2) The primary constituent elements of critical habitat for *Gaura neomexicana* ssp. *coloradensis* are the habitat components that provide:

(i) Subirrigated, alluvial soils on level or low-gradient floodplains and drainage bottoms at elevations of 5,000 to 6,400 feet (1,524 to 1,951 meters).

(ii) A mesic moisture regime, intermediate in moisture between wet, streamside communities dominated by sedges, rushes, and cattails, and dry upland shortgrass prairie.

(iii) Early- to mid-succession riparian (streambank or riverbank) plant communities that are open and without dense or overgrown vegetation (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreation trails, and urban/wildland interfaces).

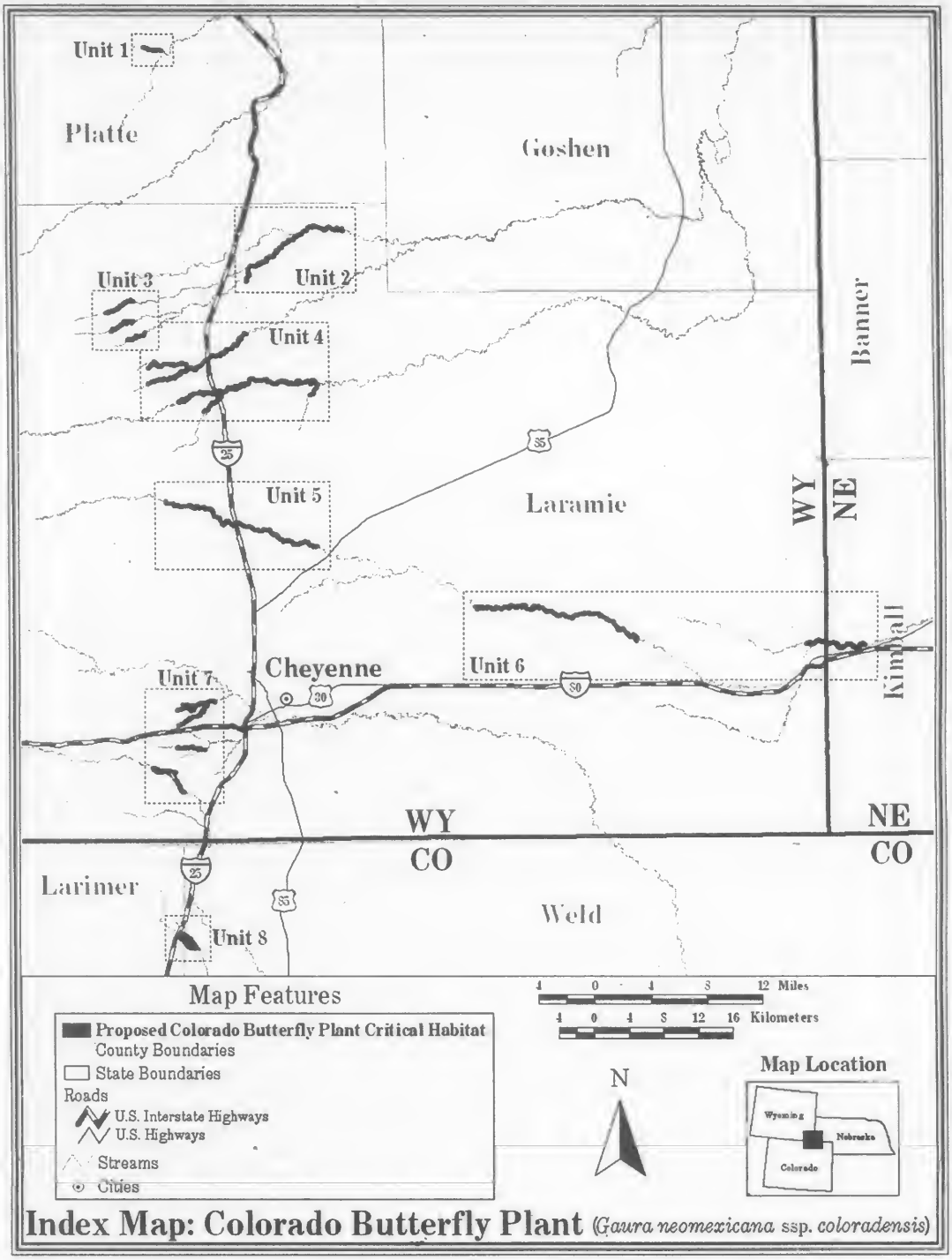
(iv) Hydrological and geological conditions that serve to create and maintain stream channels, floodplains, floodplain benches, and wet meadows that support patterns of plant communities associated with G. n. ssp. coloradensis.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas.

(4) The critical habitat is based on U.S. Geological Survey 7.5″ quadrangle maps (Borie, Bristol Ridge, Bristol Ridge NE, Burns, Bushnell, Carr West, Cheyenne North, C S Ranch, Double L Ranch, Durham, Farthing Ranch, Hillsdale, Hirsig Ranch, Indian Hill, J H D Ranch, Lewis Ranch, Moffett Ranch, Nimmo Ranch, Pine Bluffs, P O Ranch, Round Top Lake) and corresponding U.S. Fish and Wildlife Service National Wetlands Inventory maps. Critical habitat includes areas occupied by *Gaura neomexicana* ssp. *coloradensis* based upon the most current maps of surveyed subpopulations. Critical habitat also includes adjacent areas, upstream and downstream, containing suitable hydrologic regimes, soils, and vegetation communities to allow for seed dispersal between populations and maintenance of the seed bank. To ease identification of the critical habitat, the boundaries follow section lines and major geographical features where feasible. The outward extent of critical habitat is 300 feet (91 meters) from the center line of the stream edge (as defined by the ordinary high-water mark). This amount of land will support the full range of primary constituent elements essential for persistence of *G. n.* ssp. *coloradensis* populations and should adequately protect the plant and its habitats from secondary impacts of nearby disturbance.

(5) **Note:** Index Map follows:

BILLING CODE 4310–55–P

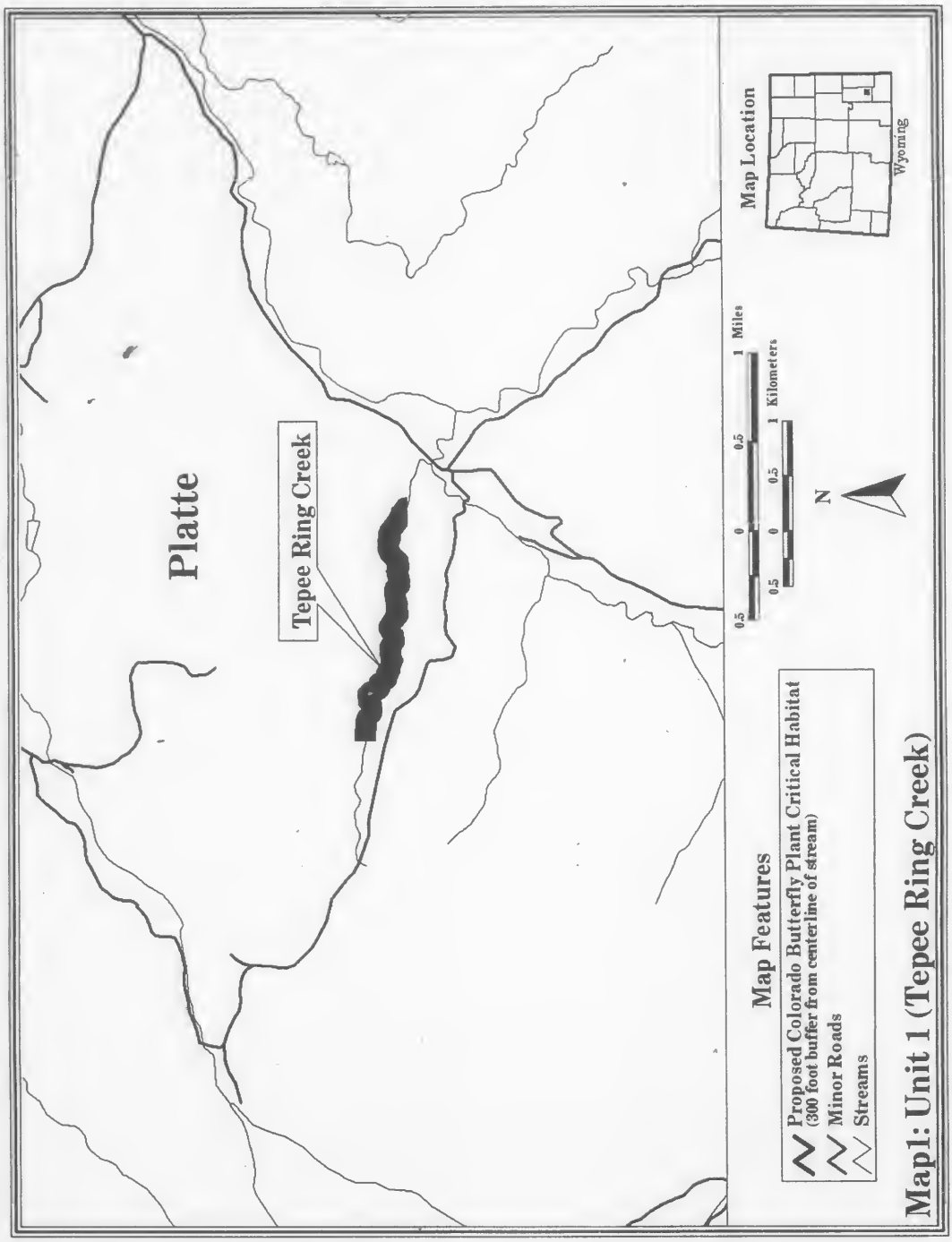


Index Map: Colorado Butterfly Plant (*Gaura neomexicana* ssp. *coloradensis*)

(6) Unit 1: Tepee Ring Creek, Platte County, Wyoming.

(i) This unit consists of 1.5 mi (2.4 km) of Tepee Ring Creek bounded by the western edge of Sec. 2, T21N R68W, extending downstream including S2 S2 of Sec. 2; downstream to SW4SW4 Sec. 1, bounded by the southern line of Sec. 1.

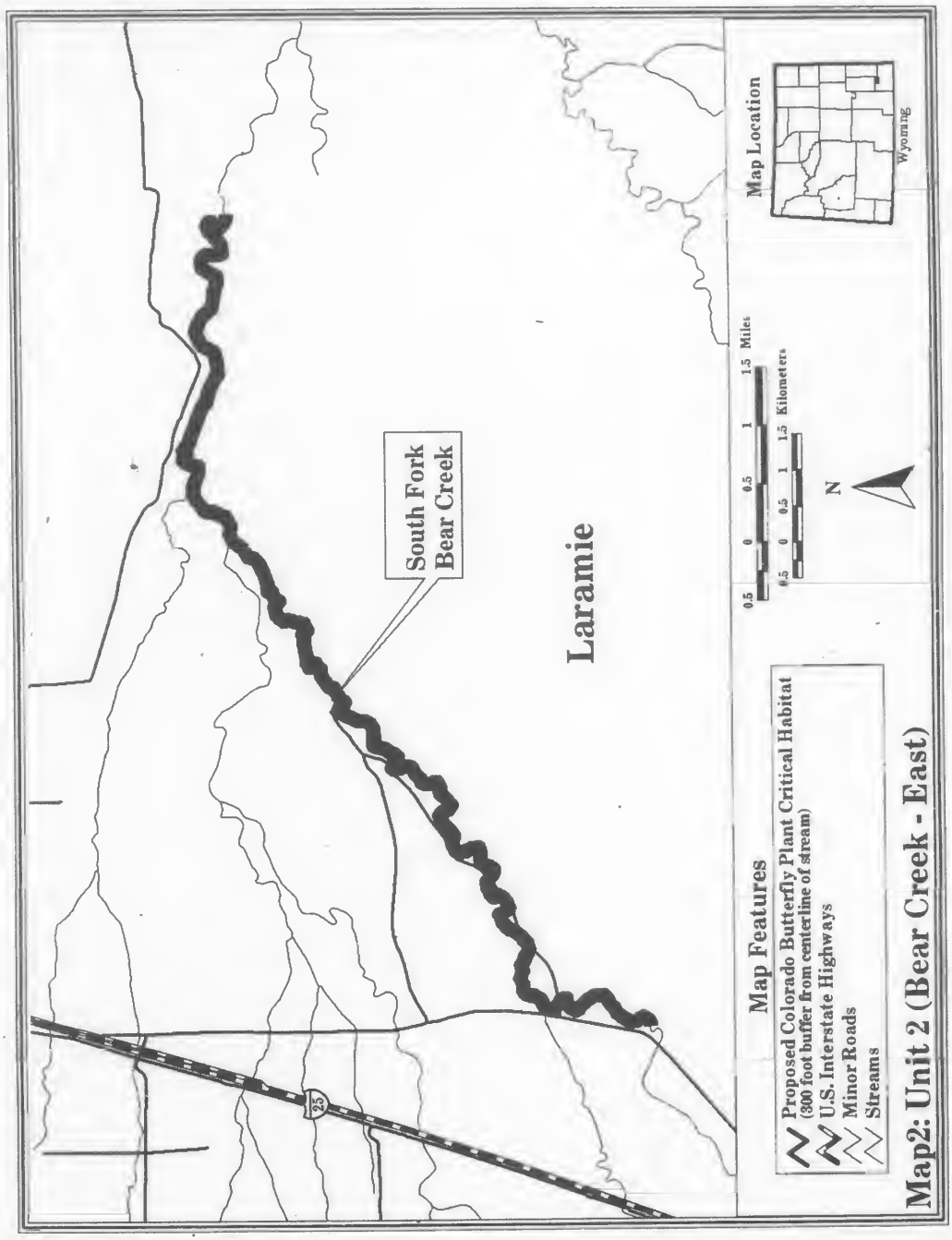
(ii) **Note:** Map 1 (Unit 1) follows:



(7) Unit 2: Bear Creek East, Laramie County, Wyoming.

(i) This unit consists of 11 mi (18 km) of the South Fork of the Bear Creek. Includes: T19N R67W, NW4 NW4 of Sec. 36; W2 SW4 Sec. 25; NW4 Sec. 25; NE4 Sec. 25; downstream into T19N R66W, S2 SW4 Sec. 19; N2 SE4 Sec. 19; NW4 Sec. 20; SE4 SW4 Sec. 17; SE4 Sec. 17; S2 NW4 Sec. 16; N2 NE4 Sec. 16; SE4SE4SE4 Sec. 9; SW4 Sec. 10; S2 NE4 Sec. 10; SW4NE4 Sec. 11; NE4SW4; N2 SE4 Sec. 11; N2 S2 Sec. 12.

(ii) **Note:** Map 2 (Unit 2) follows:



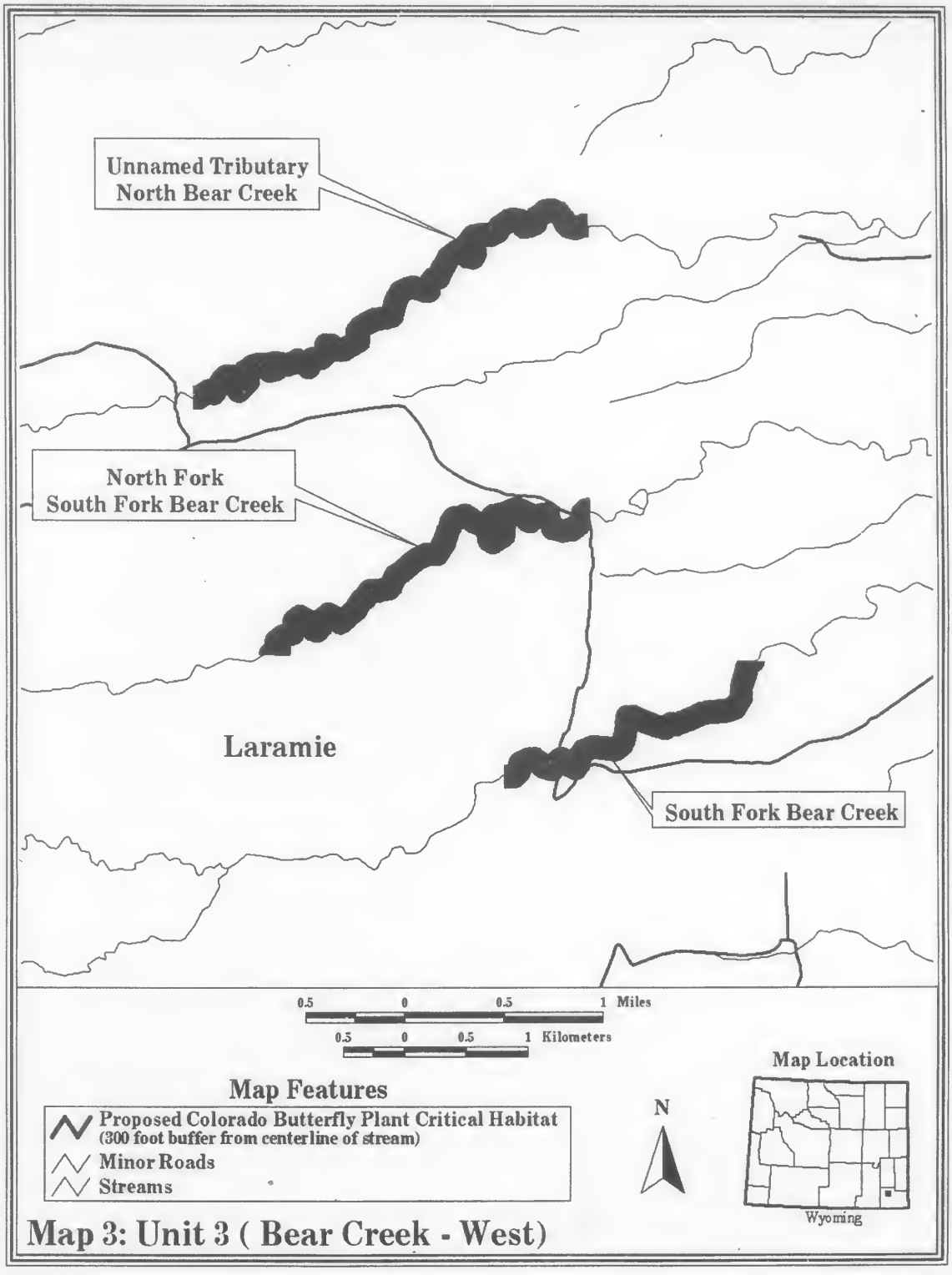
(8) Unit 3: Bear Creek West, Laramie County, Wyoming.

(i) Reach 1 consists of 2.9 stream mi (4.7 km) of an unnamed south tributary of North Bear Creek in the valley between North Bear Creek and the North Fork of the South Fork Bear Creek. Includes: T18N R68W, N2 SW4 Sec. 8; downstream to NW4NW4SE4 Sec. 8; SE4NE4 Sec. 8; NW4NW4 Sec. 9; SE4SW4 Sec. 4; S2 SE4 Sec. 4.

(ii) Reach 2 consists of 2.6 stream mi (4.2 km) of the North Fork of the South Fork Bear Creek, upstream of Nimmo Reservoir No. 9. Includes: T18N R68W, SE4SW4 Sec. 17; downstream to N2SW4SE4 Sec. 17; NW4SE4SE4 Sec. 17; S2 NE4SE4 Sec. 17; NW4SW4 Sec. 16; SE4NW4 Sec. 16; S2 NE4 Sec. 16.

(iii) Reach 3 consists of 1.7 stream mi (2.8 km) of the South Fork Bear Creek. Includes: T18N R68W, N2 N2 SE4 Sec. 21; downstream to S2 NW4 Sec. 22; NW4SW4NE4 Sec. 22; SE4NW4NE4 Sec. 22; W2 NE4NE4 Sec. 22.

(iv) **Note:** Map 3 (Unit 3) follows:



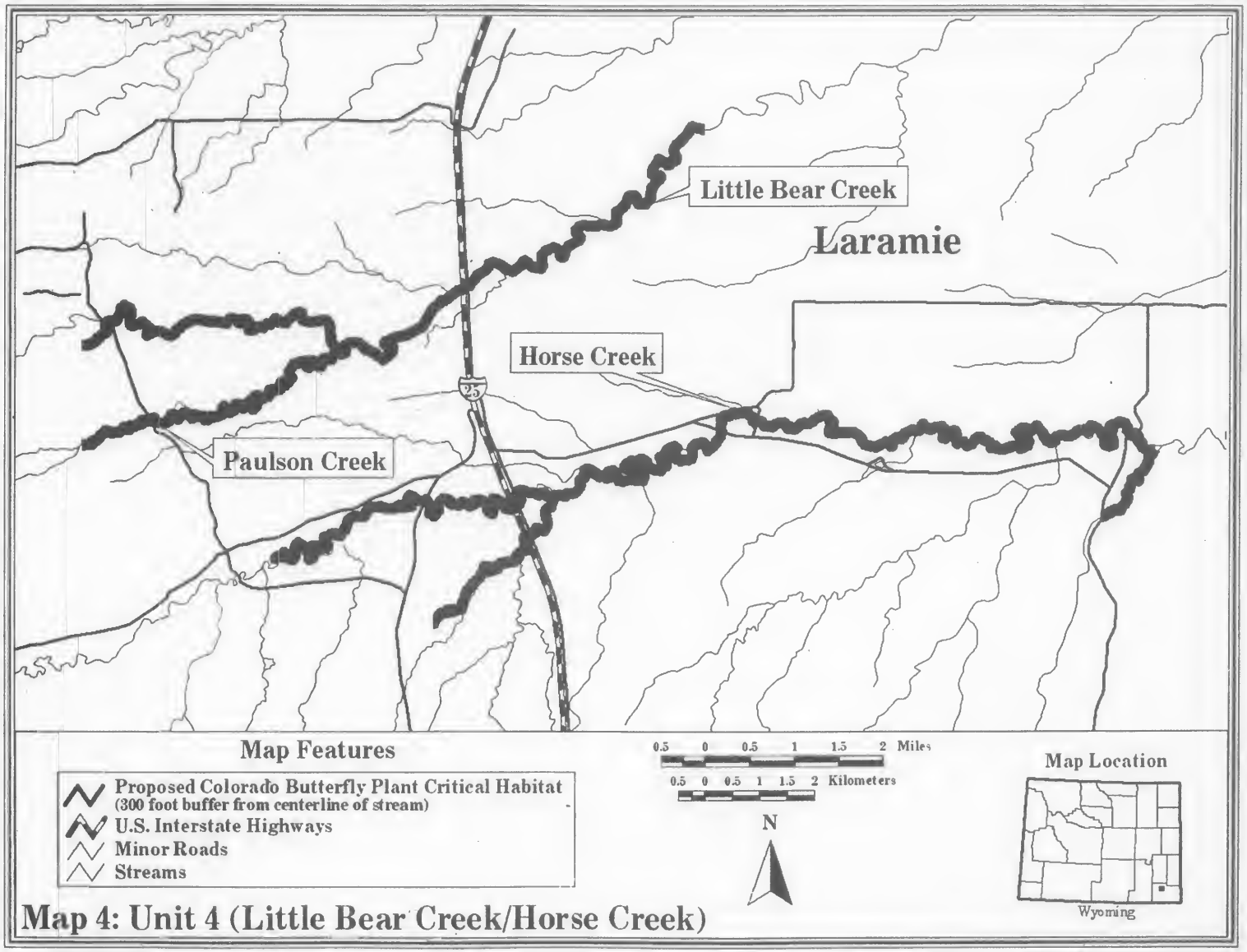
Map 3: Unit 3 (Bear Creek - West)

(9) Unit 4: Little Bear Creek/ Horse Creek, Laramie County, Wyoming.

(i) Reach 1 consists of 15.6 stream mi (25.1 km) of Little Bear Creek, which includes approximately 5 stream mi (8 km) of the Paulson Branch tributary. Little Bear Creek includes: T18N R68W, NW4NW4SW4 Sec. 35; downstream to N2 Sec. 35; N2 Sec. 36. T18N R67W, N2 Sec. 31; downstream to N2 SW4 Sec. 32; NE4 Sec. 32; NW4NW4NW4 Sec. 33; S2 Sec. 28; NW4SW4 Sec. 27; S2 SE4NW4 Sec. 27; NE4 Sec. 27; SW4 Sec. 28; SE4SE4NW4 Sec. 28; NE4 Sec. 28. Paulson Branch includes—T18N R68W, N2 SW4 Sec. 2; downstream to S2 NE4 Sec. 2; N2 Sec. 1; T18N 67W, NW4NW4 Sec. 6; SE4SW4 Sec. 31; SE4 Sec. 31.

(ii) Reach 2 consists of 36.1 stream mi (58.1 km) of Horse Creek, including approximately 2.5 stream mi (4.0 km) of an unnamed tributary entering from the south just downstream of Brunyansky Draw; and approximately 1.0 mi (1.6 km) of an unnamed tributary entering on the far eastern end just east of, and parallel to, Indian Hill Road. Includes—T17N R67W, S2 SW4 Sec. 7; downstream to SE4 Sec. 7; NW4SW4 Sec. 8; S2 N2 Sec. 8; S2 N2 Sec. 9; NW4 Sec. 10; N2 NE4 Sec. 10; S2 S2 SE4 Sec. 3; N2 N2 NW4 Sec. 11; S2 Sec. 2; NW4SW4 Sec. 1; S2 N2 Sec. 1; T17N R66W, S2 NW4 Sec. 6; downstream to N2 SE4 Sec. 6; NW4SW4 Sec. 5; SE4NW4 Sec. 5; SW4NE4 Sec. 5; N2 SE4 Sec. 5; N2 S2 Sec. 4; S2 NE4 Sec. 4; NW4SW4 Sec. 3; S2 N2 Sec. 3; N2 SE4 Sec. 3; W2 SW4 Sec. 2; NE4 Sec. 10.

(iii) **Note:** Map 4 (Unit 4) follows:

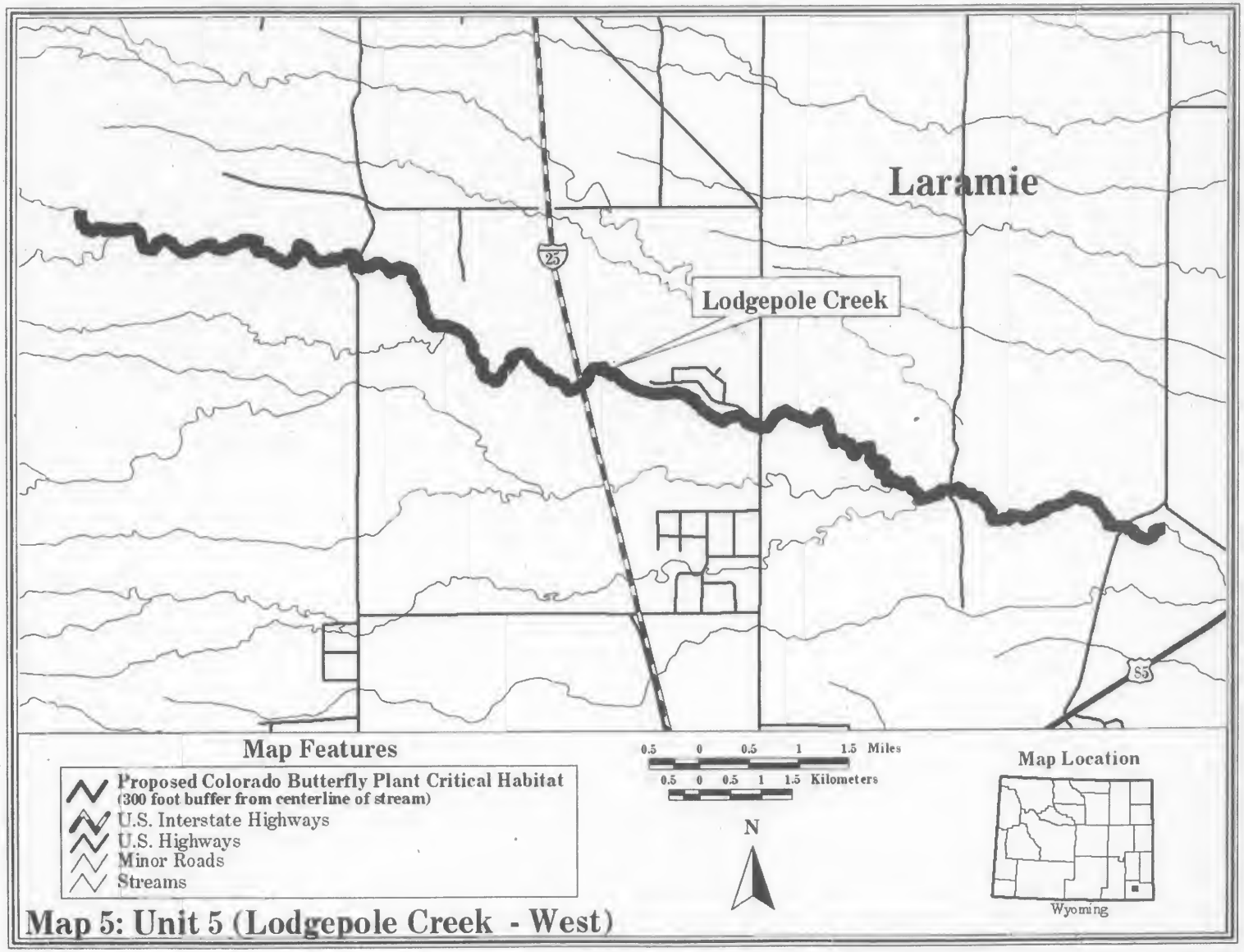


Map 4: Unit 4 (Little Bear Creek/Horse Creek)

(10) Unit 5: Lodgepole Creek West, Laramie County, Wyoming.

(i) This unit consists of approximately 15 stream mi (24 km) west along Lodgepole Creek from State highway 85. Includes: T16N R68W, N2 Sec. 24; downstream to T16N R67W, S2 N2 Sec. 19; S2 N2 Sec. 20; N2 S2 Sec. 20; N2 SW4 Sec. 21; W2 SE4 Sec. 21; N2 NE4 Sec. 28; W2 NW4 Sec. 27; N2 S2 Sec. 27; SW4NE4 Sec. 27; S2 Sec. 26; S2 SW4 Sec. 25; N2 NE4 Sec. 36; T16N R66W, N2 Sec. 31; downstream to SW4NW4 Sec. 32; SW4 Sec. 32; S2 SE4 Sec. 32; SW4SW4 Sec. 33; SE4SE4 Sec. 33; S2 SW4 Sec. 34; T15N R66W, N2 N2 Sec. 4; downstream to NE4NW4 Sec. 3; N2 NE4 Sec. 3; NW4 Sec. 2; SE4 Sec. 2.

(ii) **Note:** Map 5 (Unit 5) follows:



Map 5: Unit 5 (Lodgepole Creek - West)

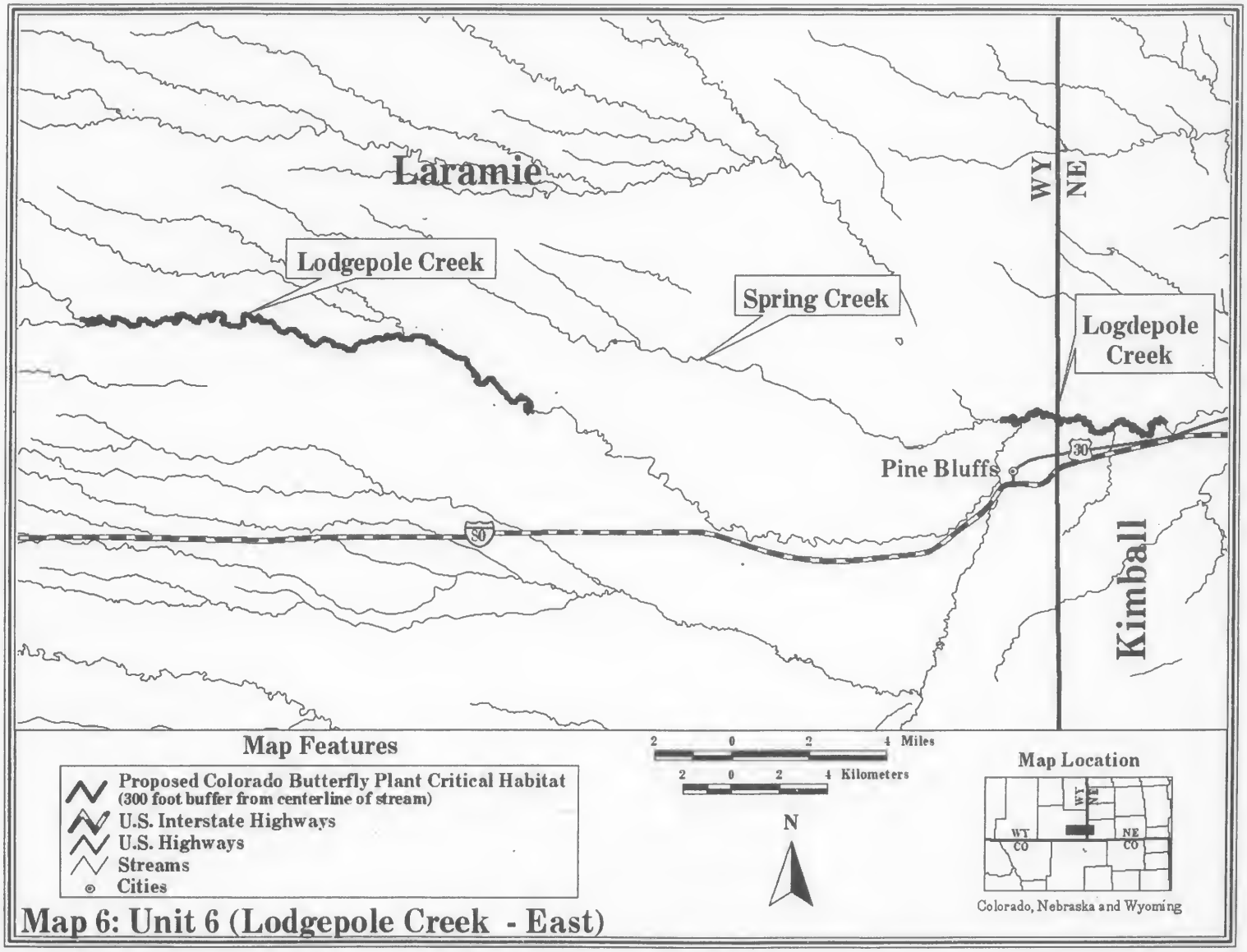
(11) Unit 6: Lodgepole Creek East, Laramie County, Wyoming and Kimball County, Nebraska.

(i) Reach 1 consists of 16.9 mi (27.2 km) of Lodgepole Creek from approximately 3 mi (5 km) northwest of the town of Hillsdale on the west end of the reach, downstream to Thomas Reservoir No. 2, approximately 2.5 mi (4.0 km) northeast of the town of Burns. Includes: T15N R64W, NE4SW4 Sec. 27; downstream to N2 N2 SE4 Sec. 27; S2 S2 NE4 Sec. 27; N2 S2 Sec. 26; S2 S2 N2 Sec. 26; S2 N2 Sec. 25; NW4SW4 Sec. 25; N2 N2 SE4 Sec. 25; T15N R63W, S2 N2 Sec. 30; downstream to NE4NE4SE4 Sec. 30; N2 SW4 Sec. 29; SE4SE4NW4 Sec. 29; S2 NE4 Sec. 29; S2 Sec. 28; S2 S2 Sec. 27; N2 N2 Sec. 34; N2 N2 Sec. 35; S2 SE4SE4 Sec. 26; S2 S2 Sec. 25; T15N R62W, SW4SW4 Sec. 30; downstream to N2 Sec. 31; SW4 Sec. 32; T14N R62W, NE4NE4NW4 Sec. 5; downstream to N2 NE4 Sec. 5; NW4 Sec. 4; SW4SW4NE4 Sec. 4; S2 Sec. 4.

(ii) Reach 2 consists of 1.4 mi (2.3 km) of Lodgepole Creek in Wyoming from north of the town of Pine Bluffs extending downstream approximately 5.5 stream mi (8.9 km) beyond the Wyoming State line into Kimball County, Nebraska. This reach also includes approximately 1.0 stream mi (1.6 km) of Spring Creek in Wyoming, west of the point of merging with Lodgepole Creek. In Wyoming, includes: T14N R60W, N2 NW4 Sec. 10; downstream to NW4NE4 Sec. 10; S2 S2 SE4 Sec. 3; SW4SW4 Sec. 2; NE4NW4 Sec. 11.

(iii) In Nebraska, includes: T14N R59W, N2 N2 SE4 Sec. 11; downstream to S2 S2 NE4 Sec. 11; S2 S2 NW4 Sec. 12; S2 Sec. 12. T14N R58W, S2 Sec. 7; downstream to S2 Sec. 8.

(iv) **Note:** Map 6 (Unit 6) follows:



Map 6: Unit 6 (Lodgepole Creek - East)

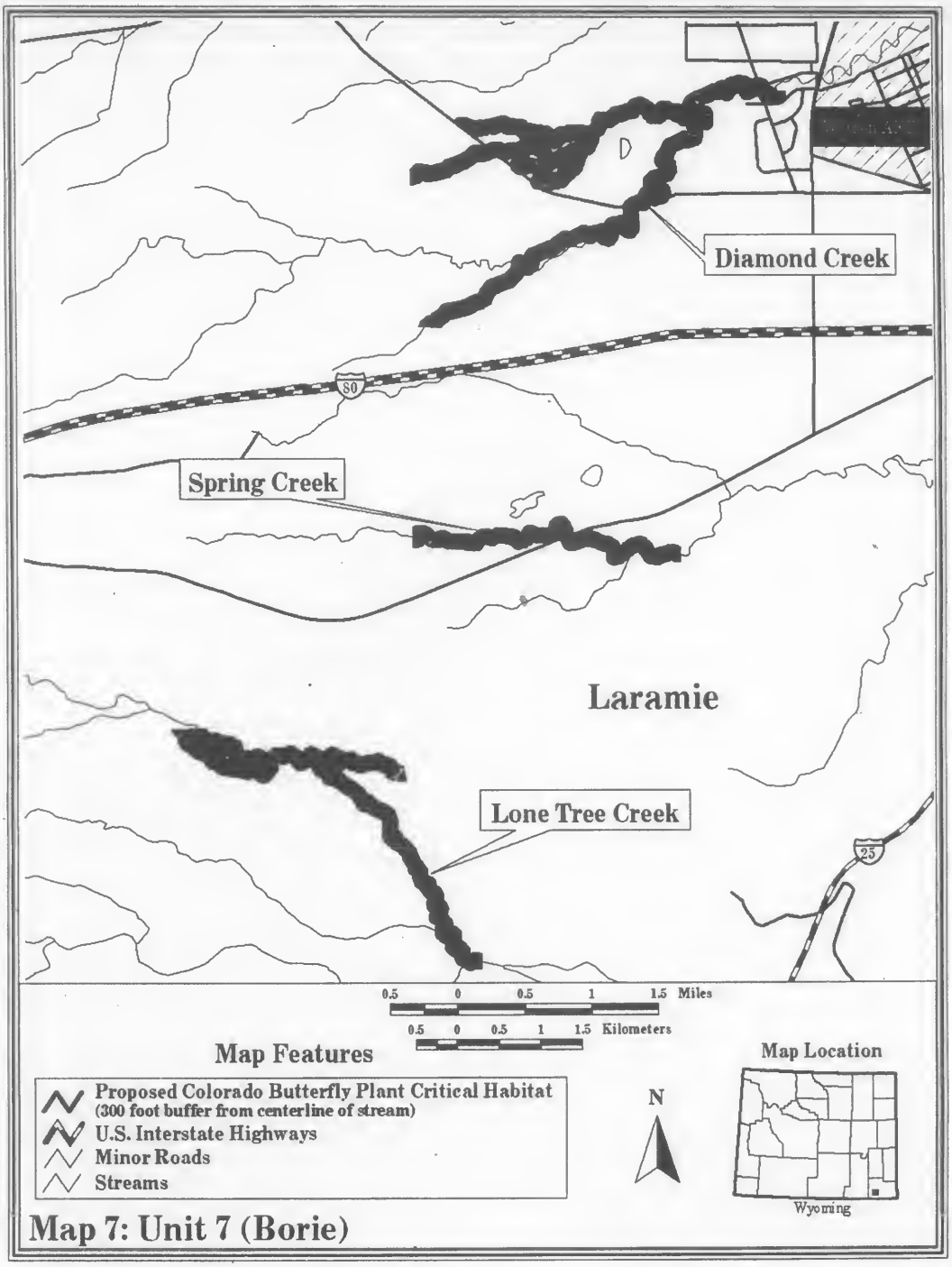
(12) Unit 7: Borie, Laramie County, Wyoming.

(i) Reach 1 consists of 9.4 stream mi (15.1 km) along Diamond Creek west of F.E. Warren Air Force Base and other smaller tributaries merging from the north. Includes: T14N R67W, N2 Sec. 33; upstream to NW4SW4 Sec. 33; S2 NE4 Sec. 32; E2 SE4 Sec. 32; SW4 Sec. 32; S2 Sec. 31; T13N R67W, N2 Sec. 5; upstream to NW4NW4SW4 Sec. 5; S2 Sec. 6.

(ii) Reach 2 consists of 2.5 stream mi (4.0 km) of Spring Creek. Includes: T13N R67W, N2 S2 Sec. 18; downstream to N2 S2 Sec. 17; SW4NW4 Sec. 17.

(iii) Reach 3 consists of 4.4 stream mi (7.1 km) of Lone Tree Creek, and approximately 1.0 mi (1.6 km) of an unnamed tributary to the north of Lone Tree Creek. Includes: T13N R68W, N2 NE4 Sec. 26; downstream to NE4NE4NW4 Sec. 26; N2 Sec. 25; SE4 Sec. 25; T13N R67W, NW4 Sec. 31; downstream to NE4SW4 Sec. 31.

(iv) **Note:** Map 7 (Unit 7) follows:

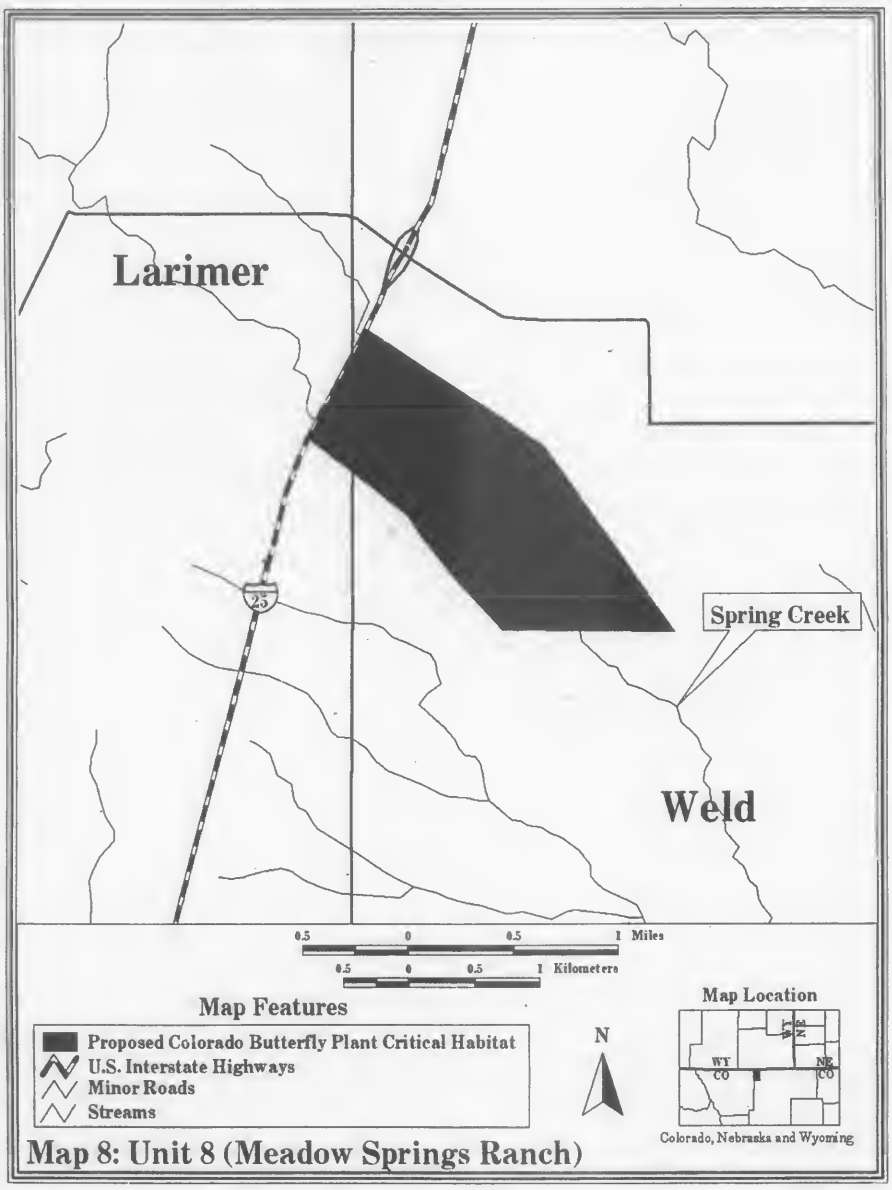


Map 7: Unit 7 (Borie)

(13) Unit 8: Meadow Springs Ranch, Weld County, Colorado.

(i) This unit consists of 707 ac (286 ha) within the Meadow Springs Ranch, Weld County, Colorado. Includes: T11N R68W, E2SE4 Sec. 24; NW4NW4 Sec 25; T11N R67W, SW4 Sec. 19; S2 SE4 Sec. 19; N2 Sec. 30; SE4 Sec. 30; NE4SW4 Sec. 30; W2 NW4 Sec. 29; SW4 Sec. 29; SW4SE4 Sec. 29.

(ii) **Note:** Map 8 (Unit 8) follows:



Map 8: Unit 8 (Meadow Springs Ranch)

* * * * *

Dated: July 29, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–17576 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 69, No. 151
Friday, August 6, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Province Advisory Committee (OPAC) will meet on Friday, August 27, 2004. The meeting will be held at the Forest Service Conference Room at the Forest Service Quinault office in Quinault, Washington. The meeting will begin at 9:30 a.m. and end at approximately 2:30 p.m. Agenda topics are: Current status of key Forest issues; update on Washington State Department of Ecology and Forest Service Memorandum of Understanding; update on owl management; Washington State Department of Natural Resources riparian management thinning; open forum; and public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: August 2, 2004.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 04–17972 Filed 8–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, August 12th in Susanville, California for a business meeting. The meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, District Ranger and Designated Federal Officer; at (530) 257–4188; or Public Affairs Officer, Heidi Perry, at (530) 252–6605.

SUPPLEMENTARY INFORMATION: The business meeting August 12th begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include; National RAC update; monitoring processes update; 2004 cycle 3 schedule; and general business. Time will also be set aside for public comments at the beginning of the meeting.

Jeff Withroe,

Acting Forest Supervisor.

[FR Doc. 04–17973 Filed 8–5–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: September 5, 2004.

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, (703) 603–7740.

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 action. If the Committee approves the proposed addition, the entity of the Federal Government identified in the notice for each service will be required to procure the service 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 service to the Government.
2. If approved, the action will result in authorizing small entities to furnish the 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 service 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 service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service:

Service Type/Location: Classified Technical Order Distribution, Tinker Air Force Base, Building 3, Door 57, Tinker AFB, Oklahoma.

NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.

Contract Activity: Directorate of Contracting (OC–ALC/PKOSF), Tinker Air Force Base, OK.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–18006 Filed 8–5–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: Effective September 5, 2004.

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, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 14, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 F.R. 32975/32976) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services 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 services to the Government.

2. The action will result in authorizing small entities to furnish the 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 services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services:

Service Type/Location: Custodial & Grounds Maintenance Federal Building, 100 Bluestone Road, Mount Hope, West Virginia.

NPA: Wyoming County Workshop, Inc., Maben, West Virginia.

Contract Activity: GSA, PBS, Region 3 (3PMT), Philadelphia, Pennsylvania.

Service Type/Location: Custodial Services, Naval Reserve Center, White River Junction, Vermont.

NPA: Northern New England Employment Services, Portland, Maine.

Contract Activity: Naval Facilities Engineering Command—Portsmouth, Portsmouth, New Hampshire.

Service Type/Location: Custodial Services, USDA AMS S&T FLS, National Science Laboratory, Gastonia, North Carolina.

NPA: Gaston Skills, Inc., Gastonia, North Carolina.

Contract Activity: USDA, Animal & Plant Health Inspection Service, Minneapolis, Minnesota.

Service Type/Location: Custodial Services, Veterans Administration Community Based Outpatient Clinic, Traverse City, Michigan.

NPA: GTP Industries, Inc., Traverse City, Michigan.

Contract Activity: VA Medical Center—Saginaw, Michigan.

Service Type/Location: Custodial Services, Base-wide, Yuma Proving Ground, (Excluding Buildings 3013, 611, and 3189), Yuma, Arizona.

NPA: Yuma WORC Center, Inc., Yuma, Arizona.

Contract Activity: Army Contracting Agency, Yuma Proving Ground, Arizona.

Service Type/Location: Grounds Maintenance, Defense Supply Center Richmond, Richmond, Virginia.

NPA: Richmond Area Association for Retarded Citizens, Richmond, Virginia.

Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Service Type/Location: Medical Transcription, 355th Medical Supply-F5HOSP, Davis-Monthan AFB, Arizona.

NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.

Contract Activity: 355th Contracting Squadron, Davis-Monthan AFB, Arizona.

Service Type/Location: Telephone/Switchboard Operator, VA Northern California Health Care System, Martinez, California, VA Sacramento Medical Center at Mather Field, Mather, California.

NPA: Project HIRED, Santa Clara, California.

Contract Activity: VISN 21 Consolidated Contracting Activity, San Francisco, California. This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–18007 Filed 8–5–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31–2004]

Foreign-Trade Zone 25—Broward County, FL, Request for Export Processing Authority, S.B. Marketing Worldwide, Inc. (Apparel Printing)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Broward County, Florida, grantee of FTZ 25, pursuant to § 400.32(b)(1)(ii) of the Board's regulations (15 CFR part 400), requesting authority on behalf of S.B. Marketing Worldwide, Inc. (SBMW), to process foreign-origin apparel products for export under FTZ procedures within FTZ 25. It was formally filed on July 30, 2004.

The proposed SBMW activity (14 employees) within Site 1–Building E, Bay 13 would involve silk screen printing of foreign-origin T-shirts (including sleeveless tank-style) for export only. The adult and children's T-shirts, which are subject to quota category 352 and classified under HTSUS 6109.10.0005, would be admitted under privileged foreign status (19 CFR 146.41) in blank (*i.e.*, plain) condition to be screen printed and dried for use as outerwear. The finished printed T-shirts would then be transferred from the zone for exportation, and none of the foreign status T-shirts would be entered for U.S. consumption.

FTZ procedures would exempt SBMW from Customs duty payments on the foreign T-shirts (17% rate of duty) processed for re-export. The application indicates that the savings from FTZ procedures would help improve SBMW's international competitiveness.

Public comment on the application is invited from interested parties.

Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at 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 Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is September 20, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 5, 2004).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above.

Dated: August 2, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–18044 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2004]

Foreign-Trade Zone 154—Baton Rouge, Louisiana, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board), by the Greater Baton Rouge Port Commission, grantee of FTZ 154, requesting authority to expand the zone in the Baton Rouge, Louisiana, area, adjacent to the Baton Rouge Customs port of entry. The application was submitted pursuant to the provisions of 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 July 28, 2004.

FTZ 154 was approved on November 2, 1988 (Board Order 396, 53 FR 48003, 11/29/88), and expanded/reorganized on April 5, 2001 (Board Order 1159, 66 FR 19422, 4/16/01). The zone project currently consists of the following sites (3,638 acres) in the Baton Rouge area: *Site 1* (370 acres)—Port of Greater Baton Rouge's entire deep-water complex along the Mississippi River, Port Allen; *Site 2* (1,277 acres)—Baton Rouge Metropolitan Airport, North Baton Rouge; *Site 3* (157 acres)—Inland Rivers Marine Terminal FTZ site located on Louisiana Highway 1, Port Allen; and, *Site 4* (1,834 acres)—industrial/chemical complex (Dow Chemical) located on Louisiana Highway 1 within the Parishes of West Baton Rouge and Iberville.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site in St. Martin Parish: *Proposed Site 5* consists of 120 acres (2 parcels) within the 155-acre St. Martin Parish Industrial Park located at 6261 Louisiana Highway 31 near St. Martinville, Louisiana. The property is owned by St. Martin Parish Government and St. Martinville L.L.C., and it is currently being marketed for industrial development. No specific manufacturing is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

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 on the application 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 Street, 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 Avenue, NW., Washington, DC 20230.

The closing period for their receipt is October 5, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 20, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Port of Greater Baton Rouge, 2425 Ernest Wilson Drive, Port Allen, LA 70767.

Dated: July 30, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–18042 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–2004]

Foreign-Trade Zone 158—Vicksburg/Jackson, MS; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg/Jackson Foreign Trade Zone, Inc., grantee of FTZ 158, requesting authority to expand its zone at sites in the Lee County area, adjacent to the Memphis, Tennessee, Customs port of entry. The application was submitted pursuant to the provisions of 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 July 28, 2004.

FTZ 158 was approved on April 11, 1989 (Board Order 430, 54 FR 15480, 4/18/89), and expanded on October 23, 1994 (Board Order 707, 59 FR 54885, 11/2/94). The zone project currently consists of nine sites (5,547 acres) in the central and north Mississippi area: *Site 1* (353 acres)—Emmitte W. Haining Industrial Center within the Port of Vicksburg Terminal, Warren County; *Site 2* (2,118 acres)—within the Jackson International Airport complex, Jackson; *Site 3* (1,286 acres)—Ceres Research and Industrial Interplex located on Interstate 20, Warren County; *Site 4* (230 acres)—Vicksburg Airport Industrial Park, Vicksburg; *Site 5* (544 acres)—Greater Jackson Industrial Center located on Interstate 55, south of Jackson (Hinds County); *Site 6* (559 acres)—Hawkins Field Industrial Park, south of Interstate 220/U.S. 49 Interchange, Jackson; *Site 7* (350 acres)—Northwest Industrial Park located one mile north of Interstate 220/U.S. 49 Interchange, north of Jackson (Hinds County); *Site 8* (39 acres)—within the Senatobia Industrial Park, adjacent to Interstate 55 in Senatobia (Tate County); and, *Site 9* (64 acres, 3 parcels)—located within the Greenville Industrial Park at 1265 Wasson Drive, 1945 North Theobald Street, and 1795 North Theobald Street in Greenville (Washington County).

The applicant is now requesting authority for a major expansion of the zone as described below. The proposal requests authority to expand the zone project to include sites in the Lee County area:

Proposed Site 10—989 acres within the 1,479-acre Airport Industrial Park, located adjacent to the Tupelo Regional Airport, City of Tupelo;

Proposed Site 11—277 acres within the 403-acre South Green Industrial

complex located adjacent to U.S. Highway 45 and the Kansas City Southern Railroad and South Green Street, City of Tupelo;

Proposed Site 12—5 acres within the 36-acre South Green Extend Industrial Complex located along South Green Street immediately west of South Gloster Street (MS 145), City of Tupelo;

Proposed Site 13—56 acres within the 164-acre Tupelo Industrial Center located at the intersection of Eason Boulevard and the Burlington Northern Railroad, City of Tupelo;

Proposed Site 14—128 acres within the 990-acre Burlington Northern Industrial Park located along the Burlington Northern Railroad and U.S. Highway 78 (I–22) and MS Highway 178 interchange, City of Tupelo/Lee County;

Proposed Site 15—699 acres within the 1315-acre Harry A. Martin North Lee Industrial Complex located at the intersection of U.S. Highway 45 and Pratts Road, City of Baldwyn/Lee County;

Proposed Site 16—284 acres within the 429-acre Turner Industrial Park located at the U.S. Highway 45 and MS Highway 145 interchange adjacent and south of the City of Saltillo; and,

Proposed Site 17—540 acres within the 1066-acre Tupelo Lee Industrial Park South located at the U.S. Highway 45 and Brewer Road interchange south of the City of Verona.

The applicant is also requesting that 124 acres at Site 2 (Jackson International Airport Complex) be restored to zone status (new total acreage—2,242 acres). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

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 on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, 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 Avenue, NW., Washington, DC 20230.

The closing period for their receipt is October 5, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 20, 2004).

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 the first address listed above, and at the Tupelo/Lee County Community Development Foundation, 300 West Main Street, Tupelo, MS 38804.

Dated: July 30, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–18043 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of time limits.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or John Conniff, AD/CVD Enforcement, Office 9, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4474 or (202) 482–1009, respectively.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On January 22, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 2002, through November 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 3117 (January 22, 2004). The preliminary results are currently due no later than September 1, 2004.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Additional time is required to collect and analyze complex factors of production consumption data from several manufacturing facilities. Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days until no later than December 30, 2004. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 2, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–18047 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

Certain Cut-to-Length Carbon-Quality Steel Plate From Japan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: In response to a request from International Steel Group Inc. (International Steel), a domestic producer of subject merchandise, the Department of Commerce (the Department) initiated an administrative

review of the antidumping duty order on certain cut-to-length carbon-quality steel plate (CTL plate) from Japan. The period of review (POR) is February 1, 2003, through January 31, 2004. For the reasons discussed below, we are rescinding this administrative review.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin Williams or Mark Manning, Group I, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2371 or 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order is certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these reviews unless otherwise specifically excluded. The following products are specifically excluded from this review: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this order is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Subheadings are provided for convenience and customs purposes.

Background

On February 3, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CTL plate from Japan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 5125 (February 3, 2004). On March 26, 2004, pursuant to a request made by International Steel, the Department initiated an administrative review of the antidumping duty order on CTL plate from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 15788 (March 26, 2004). On May 10, 2004, International Steel timely withdrew its request for an administrative review of CTL plate from Japan.

Rescission of Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1) (2003). In this case, International Steel withdrew its request for an administrative review within 90 days from the date of initiation. No other interested party requested a review and we have received no comments regarding International Steel's withdrawal of its request for a review. Therefore, we are rescinding the initiation of this review of the antidumping duty order on CTL plate from Japan.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 251.213(d)(4).

Dated: August 2, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–18046 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final determination of sales at less than fair value and antidumping duty order.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Sam Zengotitabengoa, Offcie of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651 or (202) 482–4195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2004, the Department of Commerce (Department) published the notice of final determination of sales at less than fair value for floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC). *See Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 69 FR 35296 (June 24, 2004) (*Final Determination*). On July 28, 2004, the International Trade Commission (ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(I) of the Tariff Act of 1930, as amended (the Act) that an industry in the United States is materially injured by reason of less than fair value imports of subject merchandise from the PRC.

Scope of the Order

For purposes of this order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated. or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this order.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term "unassembled" ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term "complete" ironing table means a product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term "incomplete" ironing table means a product shipped or sold as a "bare board"—*i.e.*, a metal-top table only, without the pad and cover—with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or counter top models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under the new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Amended Final Determination

On June 24, 2004, in accordance with section 735(a) of the Act, the Department published its final determination that ironing tables from the PRC are being, or are likely to be, sold in the United States at less than fair value. *See Final Determination*. On June 28, 2004, the petitioner, Home Products International, Inc., filed timely allegations that the Department made ministerial errors in its final determination. The respondents in this case, Since Hardware (Gunagzhou) Co., Ltd. (Since Hardware) and Shunde Yongjian Houseware Co. Ltd. (Yongjian), made no ministerial error allegations. On July 6, 2004, Since Hardware submitted rebuttal comments in response to the allegations made by the petitioner. For a detailed discussion of the Department's analysis of the allegations of ministerial errors, see Memorandum from Holly A. Kuga, Senior Director, Office 4, to Jeffrey May, Deputy Assistant Secretary for Import Administration, Group I, "Allegation of Ministerial Errors," dated concurrently with this notice. In accordance with 19 CFR 351.224(e), we are amending the *Final Determination* to correct certain ministerial errors.

The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Since Hardware (Guangzhou) Co., Ltd	9.47
Shunde Yongjian Housewares Co., Ltd	157.68
Forever Holdings Ltd	72.29
Gaoming Lihe Daily Necessities Co., Ltd	72.29
Harvest International Housewares Ltd	72.29
PRC-Wide Rate	157.68

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Since Hardware, Yongjian, Forever Holdings, Harvest International, and Gaoming Lihe.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of ironing tables from the PRC. For all producers and exporters, antidumping duties will be assessed on all

unliquidated entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after February 3, 2004, the date on which the Department published its notice of affirmative preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 69 FR 5127 (February 3, 2004).

On or after the date of publication of this notice in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins listed above.

This notice constitutes the antidumping duty order with respect to ironing tables from the PRC. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 2, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18040 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile with respect to Fruticola Olmue, S.A.; Santiago Comercio Exterior Exportaciones Limitada; and Uren Chile, S.A. We are rescinding the administrative review with respect to Vital Berry Marketing, S.A. This review covers sales of individually quick frozen red raspberries to the United States during the period December 31, 2001, through June 30, 2003.

We preliminarily find that, during the period of review, sales of individually quick frozen red raspberries were made below normal value. If the preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: Effective August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Ryan Langan, or Blanche Ziv, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1503, (202) 482–2613, and (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department of Commerce ("Department") published in the **Federal Register** a notice of the opportunity to request an administrative review in the above-cited segment of the antidumping duty proceeding. *See* 68 FR 39511. We received a timely filed request for review of 51 companies from the Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm, Enfield Farms, Inc., Maberry Packing, and Rader Farms, Inc. (collectively, "petitioners"). We also received timely filed requests for review from Fruticola Olmue, S.A. ("Olmue"); Santiago Comercio Exterior Exportaciones, Ltda. ("SANCO"); and Vital Berry Marketing, S.A. ("Vital Berry").[1] On August 22, 2003, we initiated an administrative review of the 51 companies. *See* 68 FR 50750.

On October 16, 2003, the Department determined that it was not practicable to make individual antidumping duty findings for each of the 51 companies involved in this administrative review. Therefore, we selected the following seven companies as respondents in this review: Arlavan, S.A.; C y C Group, S.A.; Olmue; SANCO; Uren Chile, S.A. ("Uren"); Valles Andinos, S.A.; and Vital Berry. *See* October 16, 2003, memorandum, "Individually Quick Frozen Red Raspberries from Chile: Respondent Selection," which is on file in the Central Records Unit ("CRU") in room B–099 in the main Department building.

On October 17, 2003, the Department issued antidumping duty questionnaires to the companies listed above. We received responses from the seven companies in November and December 2003.

On January 5, 2004, we received a timely filed submission from the petitioners withdrawing their request for review for all of the companies for which they had requested an administrative review, except Uren. Because the petitioners were the only parties to request an administrative review for all companies except Olmue, SANCO, and Vital Berry, on January 15, 2004, we rescinded the administrative review with respect to all of the 51 companies mentioned above except Olmue, SANCO, Uren, and Vital Berry, in accordance with 19 CFR 351.213(d)(1) (2003). *See* 69 FR 2330.

On January 16, 2004, the petitioners submitted timely allegations that Olmue, SANCO, Uren, and Vital Berry made sales below the cost of production ("COP") during the period of review ("POR").

On January 21, 2004, Vital Berry withdrew its request for an administrative review. Since the petitioners had earlier withdrawn their request for review of Vital Berry and we did not receive any objections to Vital Berry's request for withdrawal, we are rescinding the administrative review with respect to Vital Berry and publishing notice of this rescission in the **Federal Register**, in accordance with 19 CFR 351.213(d)(4), at this time. *See* January 29, 2004, memorandum, "Partial Rescission of Administrative Review with Respect to Vital Berry Marketing, S.A.," which is on file in the CRU.

On February 18, 2004, pursuant to section 773(b) of the Tariff Act of 1930, as amended, effective January 1, 1995 by the Uruguay Round Agreements Act ("the Act"), we initiated investigations to determine whether SANCO and Uren made comparison market sales during the POR at prices below the COP, within the meaning of section 773(b) of the Act because we found that the petitioners' January 16, 2004, allegations provided a reasonable basis to believe or suspect that sales in the comparison market were made at prices below the COP. *See* February 18, 2004, memorandum, "Allegation of Sales Below Cost of Production for Santiago Comercio Exterior Exportaciones;" February 18, 2004, memorandum, "Allegation of Sales Below Cost of Production for Uren Chile," which are on file in the CRU.

[1] These three companies were included in the petitioners' request for review of 51 companies.

Because we disregarded below cost sales by Olmue to the same comparison market in the original less-than-fair-value ("LTFV") investigation (the most recently completed segment of the proceeding), we consider that this provides "reasonable grounds to believe or suspect" that Olmue made sales to France of the subject merchandise at below-cost prices during the POR. Thus, we did not analyze the petitioners' sales-below-cost allegations with respect to Olmue. On February 19, 2004, we notified SANCO and Uren that they must respond to section D of the antidumping duty questionnaire.

We issued supplemental questionnaires to Olmue, SANCO, and Uren from February through April 2004. We received timely filed responses.

On March 9, 2004, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than July 30, 2004, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). *See* 69 FR 10981.

On April 13, 2004, we sent a questionnaire to Uren's largest supplier of purchased IQF red raspberries requesting COP information. On May 12, 2004, we received a letter from the supplier stating that it could not respond to the Department's questionnaire. For further discussion, *see* the "Use of Facts Otherwise Available" section below.

We conducted verification of SANCO from May 27 through June 2, 2004.

Scope of the Order

The products covered by this order are imports of individually quick frozen ("IQF") whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the order excludes fresh red raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this order is currently classifiable under 0811.20.2020 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Fair Value Comparisons

To determine whether sales of IQF red raspberries from Chile to the United States were made at less than normal value, we compared export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with 19 CFR 351.414(c)(2), we compared individual EPs to weighted-average NVs, which were calculated in accordance with section 777A(d)(2) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Olmue, SANCO, and Uren (collectively, "respondents") in the comparison market during the POR that fit the description in the "Scope of the Order" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise in the comparison market made in the ordinary course of trade, where possible. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. To determine the appropriate product comparisons, we considered the following physical characteristics of the products in order of importance: Grade, variety, form, cultivation method, and additives.

Export Price

For sales to the United States, we calculated EP in accordance with section 772(a) of the Act because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States and because constructed export price methodology was not otherwise warranted. We based EP on packed ex-factory, CIF, C&F, FOB, and delivered prices to unaffiliated purchasers in the United States. We identified the correct starting price by adjusting the reported gross unit price, where applicable, for interest revenue and billing adjustments. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, domestic inland freight, brokerage and handling, pre-sale warehousing expenses, international freight, marine insurance, U.S. customs duties, U.S. inland freight, and other U.S. transportation expenses.

To calculate EP, we relied upon the data submitted by the respondents, except as noted below:

Olmue

For certain sales, Olmue did not report payment dates because payment is still pending. For those sales for which payment has not yet been received, we set the payment date equal to the date of the preliminary results. We recalculated Olmue's imputed credit expenses using the revised payment dates, where applicable, and the gross unit price adjusted for pricing adjustments. For further discussion, see July 29, 2004, memorandum, "Calculations for the Preliminary Results for Fruticola Olmue, S.A." ("*Olmue Calculation Memorandum*"), which is on file in the CRU.

SANCO

For certain sales, we revised SANCO's reported date of sale, gross unit price, warehousing expenses, and direct selling expenses based on information obtained at verification. We also revised SANCO's indirect selling expenses ratio and, accordingly, recalculated indirect selling expenses. In addition, we recalculated imputed credit expenses because SANCO revised its date of sale but did not revise its reported credit expenses. *See* July 19, 2004, "Antidumping Duty Administrative Review of IQF Red Raspberries from Chile: Verification Report-SANCO" ("*SANCO Verification Report*") at 2, 11–13, and 15–17, which is on file in the CRU. For further discussion, see July 29, 2004, memorandum, "Calculations for the Preliminary Results for Santiago Comercio Exterior Exportaciones Limitada" ("*SANCO Calculation Memorandum*"), which is on file in the CRU.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Olmue, SANCO, and Uren reported that their home market sales of IQF red raspberries during the POR were less than five percent of their sales of IQF red raspberries in the United States. Therefore, none of the respondents had a viable home market for purposes of calculating normal value. SANCO and Uren reported that the United Kingdom was their largest viable third country market, and Olmue reported that France was its largest viable third country market. Accordingly, SANCO and Uren

reported their sales to the United Kingdom, and Olmue reported its sales to France for purposes of calculating NV.

B. Cost of Production

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative ("G&A") expenses, financial expenses, and comparison market packing costs, where appropriate. *See infra* "Test of Comparison Market Sales Prices" for a discussion of the treatment of comparison market selling expenses.

We relied on the COP data submitted by the respondents, except where noted below:

Olmue

We used Olmue's G&A expenses for fiscal year 2002, the fiscal year which most closely corresponds to the POR. We also used the fiscal year 2002 financial expenses for the financial expense ratio. In addition, we revised Olmue's reported financial expenses to include the full portion of the monetary correction reported in Olmue's financial statements and disallowed the portion of the reported financial expenses offset related to interest earned on receivables. For further discussion, *see Olmue Calculation Memorandum.*

Olmue claimed a start-up adjustment for its new IQF tunnel and various updates to its existing plant. Section 773(f)(1)(C)(ii) of the Act sets forth the criteria that a respondent must meet in order for the Department to grant an adjustment for startup operations: (I) "a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production." For purposes of the first criterion, when a new facility is not constructed, the Department may consider a "new production facility" to exist when there has been "substantially complete retooling of an existing plant" which "involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery." *See* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc No. 103–316, vol. 1, at 870 (1994) ("*SAA*") at 836.

Olmue stated in its questionnaire response that its facility is not new; rather, Olmue expanded the size and capacity of its existing facility. Olmue explained that it added a new IQF tunnel, "reinstalled" the same tunnel from the previous season, and increased its storage and processing capacity. Olmue claims that these additions and improvements to its existing facility were a major undertaking tantamount to the construction of a new facility. Thus, Olmue claims that it is entitled to a start-up adjustment.

We agree that Olmue added a new IQF tunnel and some new storage and processing equipment during the POR. However, Olmue has not shown that the existing facilities (*e.g.*, "reinstalled" IQF tunnel) underwent a "substantially complete retooling," which, as defined by the *SAA*, "involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery." *See SAA* at 836. Olmue has provided no information which would indicate that its existing processing and storage areas were replaced or completely rebuilt. Rather, when asked in a supplemental questionnaire, Olmue simply described the new processing and storage equipment installed to accommodate the increased capacity expected from the new IQF tunnel. In addition, concerning the existing IQF tunnel, Olmue merely stated that it was "experimenting" with the tunnel which was the "*same* tunnel" that was "*reinstalled* from the previous season." *See* Olmue's April 5, 2004, supplemental section D questionnaire response at 11 {emphasis added}. Thus, the information on the record indicates that Olmue did not completely retool or rebuild its existing machinery and facilities.

Instead, the record indicates that Olmue merely increased its capacity by adding new machinery for another production line within its existing production facility. The SAA states that the Department "will not consider an expansion of the capacity of an existing production line to be a startup operation unless the expansion of the capacity constitutes such a major undertaking that it requires the construction of a new facility* * *" *See SAA* at 836. As discussed above, Olmue did not build a new facility and has not provided evidence that its current facility has been substantially retooled or rebuilt. We find that the changes Olmue made to its existing production facility do not meet the first criterion of the statutory requirement of section 773(f)(1)(C)(ii) of the Act for a start-up adjustment. Therefore, the Department did not make a start-up adjustment when calculating Olmue's COP.

SANCO

We revised direct materials, direct labor, variable overhead, and fixed overhead based on information obtained at verification. *See SANCO Verification Report* at 19–23. We also recalculated SANCO's G&A and financial expenses using the revised total cost of manufacture. For further discussion, *see SANCO Calculation Memorandum.*

Uren

Uren was a producer of IQF red raspberries through a tolling arrangement and also a reseller of the subject merchandise. For merchandise produced through Uren's tolling arrangement, we based the COP on the price Uren paid for the fresh berries from its unaffiliated supplier and the price Uren paid for the processing, plus amounts for G&A expenses and financial expenses. For IQF raspberries not produced by Uren, we requested COP data from the largest of Uren's finished product suppliers. Uren's supplier did not provide the COP information requested. For IQF raspberries obtained from the unresponsive supplier, we based the COP on the highest cost reported by Uren for purchases of finished product, plus amounts for G&A expenses and financial expenses. For the remaining IQF raspberries not produced by Uren, we based the COP on Uren's production cost (*i.e.*, Uren's tolling costs). For further discussion, *see* the "Use of Facts Otherwise Available" section below.

We reallocated certain reported indirect selling expenses to Uren's reported G&A expenses. For further discussion, *see* July 29, 2004, memorandum, "Preliminary Results Calculation Memorandum for Uren Chile S.A." ("*Uren Calculation Memorandum*"), which is on file in the CRU.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, an interested party or any other person (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this

title.[2] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As noted in the background section above, on February 18, 2004, the Department initiated an investigation to determine whether Uren made comparison market sales during the POR at prices below the COP, within the meaning of section 773(b) of the Act. We received a response from Uren to section D of the Department's antidumping duty questionnaire on April 5, 2004. In its response, Uren reported two different scenarios depicting its costs: (1) Its acquisition cost for finished subject merchandise (*i.e.*, Uren acted as a reseller of the subject merchandise); and (2) its cost for purchases of fresh fruit from unaffiliated parties and its cost for having an unaffiliated subcontractor process the fruit. In the second scenario, Uren is the producer of the tolled merchandise pursuant to 19 CFR 351.401(h).

Where the sale to an exporter or reseller is finished subject merchandise, the Department's practice is to rely on the COP of the producer. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina*; 66 FR 50611 (October 4, 2001) and accompanying *Decision Memorandum*, at Comment 1. Consistent with our practice regarding resales of subject merchandise, we requested COP data from Uren's largest supplier on April 13, 2004.[3] On May 12, 2004, we received a letter from the supplier stating, among other things, that it does not export subject merchandise and that it did not have the resources to respond to the Department's questionnaire.

In accordance with section 776(b) of the Act, if the Department finds that "an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information," an adverse inference may be used in determining the facts otherwise available. Because Uren's supplier, which, as a producer of subject merchandise, is an interested party in this proceeding, did not act to the best of its ability by failing to provide the COP information requested by the Department, we preliminarily find that it is appropriate to make an adverse inference pursuant to section 776(b) of the Act with respect to the finished berries purchased from that supplier. As adverse facts available for purchases of finished berries from Uren's largest supplier, because we did not have any COP information from any producer of finished berries supplying Uren, we used the highest of any cost reported by Uren, plus amounts for G&A expenses and financial expenses, in accordance with section 776(a) of the Act. In this case, the highest cost reported on the record was a purchase price by Uren for finished berries. As noted above, when calculating COP, the Department's practice is to disregard acquisition costs in favor of the COP of the producer. However, based on our comparison of the available cost information in this review, we found that Uren's highest reported acquisition cost for purchases of finished berries was the highest cost on the record of this proceeding and, therefore, appropriate as an adverse surrogate for the actual cost of production.

As noted above, the Department only requested COP information from Uren's largest supplier of finished berries. The remaining suppliers of finished berries were not asked to provide cost data for the POR and, thus, cannot be found to have been non-cooperative. Therefore, for IQF berries purchased from the remaining suppliers, we applied neutral facts available for the preliminary results, pursuant to sections 776(a)(2)(A) and (B) of the Act. As neutral facts available, we have used Uren's reported average COP from its tolled merchandise, plus amounts for G&A expenses and financial expenses.

a. *Test of Comparison Market Prices.* On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. The prices were exclusive of any applicable billing adjustments, movement expenses, direct selling expenses, commissions, indirect selling expenses, and packing expenses. In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

b. *Results of the COP Test.* Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product during the POR were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for Olmue, SANCO and Uren, for certain specific products, more than 20 percent of the comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For U.S. sales of subject merchandise for which there were no comparable comparison market sales in the ordinary course of trade (*e.g.*, sales that passed the cost test), we compared those sales to constructed value ("CV"), in accordance with section 773(a)(4) of the Act.

C. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, when sales of comparison products could not be found, either because there were no sales of a comparable product or all

[2] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

[3] Uren had multiple suppliers of IQF raspberries during the POR. We requested COP information from Uren's largest supplier only.

sales of the comparable products failed the COP test, we based NV on CV.

In accordance with sections 773(e)(1) and (e)(2)(A) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A expenses, financial expenses, profit, and U.S. packing costs. We made the same adjustments to the CV costs as described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A expenses, and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

D. Level of Trade

Section 773(a)(1)(B)(ii) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[4] including selling functions,[5] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(I) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either comparison market or third country prices[6]),we consider the starting prices before any adjustments. When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Olmue

Olmue reported a single channel of distribution and a single LOT in each market and claimed that its sales in both markets were at the same LOT. Therefore, Olmue did not request an LOT adjustment.

We examined the information reported by Olmue regarding its marketing processes for its comparison market and U.S. sales, including customer categories and the type and level of selling activities performed. Olmue reported that it sold to distributors and end-users in the third country and to traders, distributors, end-users, and retailers in the United States. In both markets, Olmue reported similar selling activities regardless of the customer category. Thus, we preliminarily determine that Olmue sold to a single LOT in the comparison and U.S. markets. Moreover, there was only a minor difference in the selling activities between the two markets. In the U.S. market, Olmue received interest revenue on several sales to one customer. Otherwise, sales in both markets were direct shipments to customers from the plant. Olmue also did not grant rebates or discounts, provide technical services or post-sale warehousing, or incur advertising expenses in either the third country or U.S. market. Therefore, the Department preliminarily determines that Olmue's sales in the comparison and U.S. markets were made at the same LOT.

SANCO

SANCO reported that it had a single LOT in the comparison and U.S. markets and that the LOT in each of these markets was the same. Therefore, SANCO has not requested an LOT adjustment.

We examined the information reported by SANCO regarding its marketing processes for its comparison market and U.S. sales, including customer categories and the type and level of selling activities performed. SANCO reported two channels of distribution in each market. In channel one in the U.S. market, the customer is the importer of record and arranges for customs entry and pays the customs duties. In channel two in the U.S. market, SANCO is the importer of record and arranges for customs entry and pays the customs duties. SANCO sells to the same type of customer in both channels of trade. Except for the differences regarding the entry of the merchandise, there are no differences in the selling activities for these two channels of distribution. Therefore, we preliminarily determine that there is a single LOT in the U.S. market.

Similarly, in channel one in the third country market, SANCO ships raspberries directly from the plant to the customer. In channel two in the third country market, SANCO warehouses the raspberries before they are shipped to the customer. SANCO sells to the same type of customer in both channels of distribution. Although these two channels of distribution differ slightly in terms of processing activity (*i.e.*, warehousing), the selling activities undertaken by SANCO are otherwise identical. Therefore, we find a single LOT in SANCO's third country market.

Comparing sales in SANCO's two markets, there is no indication that there were significantly different selling activities or sales process activities. SANCO also did not grant rebates or discounts, provide technical services or post-sale warehousing, or incur advertising expenses on either U.S. or third country sales.

Therefore, the Department finds that a single LOT exists in both the U.S. and third country markets, and that SANCO's sales in the U.S. and third country markets are made at the same LOT.

Uren

Uren reported selling to a single customer category through two channels of distribution in the comparison market: (1) Direct delivery sales from Chile to the customer (channel 1); and (2) sales out of inventory in the United Kingdom (channel 2). We examined these channels reported by Uren and found that they were similar with respect to freight services and warranty service. However, we found that they varied significantly with respect to sales process (*e.g.*, customer visits, forecasting services, re-sorting, etc.), and warehousing/inventory maintenance. Based on our overall analysis of the comparison market, we preliminarily find that channel 1 and channel 2 constitute distinct LOTs, LOTH 1 and LOTH 2, respectively.

[4] The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[5] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[6] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

In the U.S. market, Uren reported sales to processors and trading companies/resellers through a single channel of distribution, direct sales. Sales to these two customer categories through this channel of distribution were similar with respect to sales process, warehouse/inventory maintenance and warranty service, and differed only slightly with respect to freight services. Therefore, we preliminarily find that Uren had a single LOT for its U.S. sales.

When we compare Uren's U.S. LOT to the comparison market LOTs, we find that the LOT in the United States was similar to the comparison market LOTH 1 but differed considerably from the comparison market LOTH 2 with respect to sales process and warehouse/inventory maintenance. Consequently, we matched Uren's U.S. sales to sales LOTH 1 in the comparison market. Where no matches at the same LOT were possible, we matched to sales in LOTH 2 and, where appropriate because there was a pattern of consistent price differences between different LOTs, made an LOT adjustment. *See* section 773(a)(7)(A) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-factory, FOB, C&F, and delivered prices to unaffiliated customers in the comparison market. We identified the starting price and made adjustments for billing adjustments, where appropriate. In accordance with section 773(a)(6)(B)(ii) of the Act, we made deductions for movement expenses, including domestic inland freight, pre-sale warehousing expenses, international freight, marine insurance, third country duties, and third country inland freight, where applicable. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses, and other direct selling expenses, where appropriate. For Olmue, we also made adjustments, where appropriate, for indirect selling expenses incurred in the comparison market or the United States where commissions were granted on sales in one market but not in the other (the commission offset), in accordance with 19 CFR 351.410(e).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise (the "DIFMER" adjustment), where applicable, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted comparison market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

To calculate NV, we relied upon the data submitted by the respondents, except as noted below:

Olmue

We recalculated Olmue's imputed credit expenses using the gross unit price adjusted for pricing adjustments. For further discussion, *see Olmue Calculation Memorandum.*

SANCO

For certain sales, we revised SANCO's reported date of sale, warehousing expenses, and international freight expenses based on information obtained at verification. We also revised SANCO's indirect selling expense ratio and, accordingly, recalculated indirect selling expenses. In addition, we recalculated imputed credit expenses because SANCO revised its date of sale but did not revise its reported credit expenses. *See SANCO Verification Report* at 2, 11–13, and 15–17. For further discussion, *see SANCO Calculation Memorandum.*

Uren

We reallocated certain indirect selling expenses to G&A expenses. For further discussion, *see Uren Calculation Memorandum.*

F. Calculation of Normal Value Based on Constructed Value

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we added U.S. packing costs.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act based on the exchange rates in effect on the date of the U.S. sale as reported by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily find the following weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin percentage
Fruticola Olmue, S.A.	1.46
Santiago Comercio Exterior Exportaciones, Ltda.	0.25 (*de minimis*)
Uren Chile, S.A.	13.41

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to U.S. Customs and Border Protection to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculate importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and we do not have entered values, we calculate a per-unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of the final results of this review.

Cash Deposit Rates

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of IQF red raspberries from Chile entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rate established in the final results of this review, except if a rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review, but was covered in a previous

review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 6.33 percent, the "all others" rate established in the LTFV investigation (*see* 67 FR 45460, July 9, 2002).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held 37 days after the publication of this notice, or the first business day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: July 29, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–17938 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: In response to a request from Anvil International, Inc. (Anvil) and Ward Manufacturing, Inc. (Ward), domestic producers of subject merchandise and interested parties in this proceeding, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on non-malleable cast iron pipe fittings (pipe fittings) from the People's Republic of China (PRC). The period of review (POR) is April 1, 2003, through March 31, 2004. For the reason discussed below, we are rescinding this administrative review.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Sam Zengotitabengoa or Mark Manning, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

For purposes of this review, the products covered are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or un-threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as "cast iron pipe fittings" or "gray iron pipe fittings." These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of this petition. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications AWWA C110 or AWWA C153 are not included.

Imports of covered merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Background

On April 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping order on pipe fittings from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 17129 (April 1, 2004). On May 27, 2004, pursuant to a request made by Anvil and Ward, the Department initiated an administrative review of the antidumping duty order on pipe fittings from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 30282 (May 27, 2004). On July 27, 2004, Anvil and Ward timely withdrew their request for an administrative review of pipe fittings from the PRC.

Rescission of Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). In this case, Anvil and Ward withdrew their request for an administrative review within 90 days from the date of initiation. No other interested party requested a review and we have received no comments regarding Anvil and Ward's withdrawal of their request

for a review. Therefore, we are rescinding the initiation of this review of the antidumping duty order on pipe fittings from the PRC.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 251.213(d)(4).

Dated: August 2, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–18045 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Turkey for the period July 1, 2002, through June 30, 2003.

We preliminarily determine that during the period of review (POR), Filiz Gida Sanayi ve Ticaret A.S. (Filiz) and Tat Konserve A.Ş. (Tat), successor-in-interest to Pastavilla Makarnacilik San. V. Tic. A.Ş., (Pastavilla) [1] sold subject merchandise at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding should also submit with them: (1) A statement of the issues; (2) a brief summary of their comments; and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Mark Young, AD/CVD Enforcement, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3601 or (202) 482–6397, respectively.

SUPPLEMENTARY INFORMATION

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Turkey (61 FR 38545). On July 2, 2003, we published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of this order, for the period July 1, 2002, through June 30, 2003 (68 FR 39511).

On July 31, 2003, we received a request for review on behalf of petitioners, for *Filiz, Tat, Beslen Makarna Gida Sanayi* ve *Ticaret, A.S.*, and *Beslen Pazarlarma Gida Sanayi* ve *Ticaret A.S.*, respectively (collectively Beslen), *Gidasa Sabanci Gida Sanayi* ve *Ticaret, A.S.* (successor to *Maktas-Makarnacilik* ve *Ticaret, A.S.*) (Gidasa), and *Oba Makarnacilik Sanayi* ve *Ticaret, A.S.*, (Oba) in accordance with 19 CFR 351.213(b)(1). On August 22, 2003, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2002, through June 30, 2003, for Filiz, Tat, Beslen, Gidasa, and Oba. *See Notice of Initiation*, 68 FR 50750 (August 22, 2003).

On September 10, 2003, we sent the antidumping duty questionnaires to Filiz, Tat, Beslen, Gidasa, and Oba.[2]

On September 29, 2003, Oba sent a letter to the Department stating that it had no shipments of subject merchandise to the United States. On October 3, 2003, petitioners withdrew their request for review for Beslen, Gidasa, and Oba.

For both Filiz and Tat, the Department disregarded sales below the cost of production during the most recently completed segment of the proceeding in which these companies participated.[3] Therefore, pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (COP). Thus, we initiated a cost investigation of Filiz and Tat at the time we initiated the antidumping review.

Filiz and Tat submitted their sections A through D questionnaire responses on October 31, 2003, and November 12, 2003, respectively. Both Tat and Filiz submitted voluntary supplemental submissions to the Department on December 18, 2003. Tat and Filiz also

[1] The Department has previously determined that Tat is the successor-in-interest to Pastavilla Makarnacilik San. V. Tic. A.Ş. (Pastavilla), and that Tat retains the antidumping and countervailing duty deposit rates assigned to Pastavilla by the Department in the most recently completed antidumping and countervailing duty administrative reviews. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Turkey*, 69 FR 1280 (January 8, 2004).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

[3] For Tat, the fourth administrative review covering the period July 1, 1999, through June 30, 2000, was the most recently completed review. *See Certain Pasta From Turkey: Final Results of Antidumping Duty Administrotive Review and Determination Not To Revoke the Antidumping Duty Order in Part*, 67 FR 298 (January 3, 2002) (*Posta from Turkey 4*). For Filiz, the fifth administrative review covering the period July 1, 2000, through June 30, 2001, was the most recently completed review. *See Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review ond Determination Not To Revoke the Antidumping Duty Order in Port*, 68 FR 6880 (February 11, 2003) (*Pasto from Turkey 5*).

submitted a second voluntary submission on February 24, and February 26, 2004, respectively.

The Department issued supplemental sections A through D questionnaires to Tat on February 26, 2004, March 11, 2004, and March 25, 2004. Tat submitted its responses to our supplemental questionnaires on March 25, 2004, April 8, 2004, and April 15, 2004, respectively. The Department issued supplemental sections A through D questionnaires to Filiz on March 25, 2004. Both Filiz's and Tat's supplemental sections A through D questionnaires were based upon submissions filed on October 31, 2003, November 12, 2003, and December 18, 2003, respectively. Filiz submitted its response to our supplemental questionnaire on April 19, 2004.

On April 28, 2004, the Department returned Tat's and Filiz's second voluntary submission dated February 24, and February 26, 2004, respectively, as untimely filed new factual information pursuant to 19 CFR 351.301(b)(2). *See* Memorandum to File Re: Tat and Filiz to Strike Unsolicited Questionnaire Responses from the Record, dated April 28, 2004.

On March 17, 2004, the Department published a notice postponing the preliminary results of this review until July 29, 2004.[4] *See Certain Pasta from Italy and Turkey: Extension of Preliminary Results 2002/2003 Antidumping Duty Administrative Reviews*, 69 FR 12641 (March 17, 2004).

We verified the sales and cost information submitted by Tat from May 10 through May 21, 2004. We did not verify the sales or cost information submitted by Filiz in the instant review.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the cost and sales information provided by Tat. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in a verification report placed in the case file in the central records unit (CRU). We revised certain sales and cost data based on verification findings; *see Tat's Preliminary Calculation Memorandum* (*Preliminary Calculation Memorandum*) (July 30, 2004) and *Verification of the Sales Questionnaire of Tat* (July 30, 2004) on file in the CRU.

Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing between each U.S. model and the most similar home market model selected for comparison.

Proposed Modification to Wheat Codes

Besides the wheat codes outlined in their questionnaire responses,[5] Filiz and Tat have classified an additional variety of wheat used in the production of pasta as a separate wheat code. In the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996) (*Pasta Investigation*), we established that differences in wheat quality may be commercially significant as measured by ash content, gluten content and cost. *See Pasta Investigation* at 30346. Where respondents have been able to justify differences due to ash and gluten content, as well as cost, the Department has found that these differences result in more appropriate product matches, as contemplated by section 771(16) of the Act. *Id.*

However, we preliminarily determine that both Filiz and Tat's second wheat code (Wheat code 2) has failed to meet the standards outlined in the *Pasta Investigation*. Specifically, Filiz and Tat failed to provide any evidence that indicate ash content, gluten content or cost differed among their wheat codes. Therefore, Tat's and Filiz's wheat codes 1 and 2 were combined for the purposes of these preliminary results. For further discussion of the wheat code, see the company-specific calculation memoranda on file in the CRU.

Comparisons to Normal Value

To determine whether sales of certain pasta from Turkey were made in the United States at less than fair value, we compared the export price (EP) to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. Because Turkey's economy experienced high inflation during the POR, as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our 90/60 contemporaneity rule. *See, e.g., Pasta from Turkey 5* and *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 69 FR 18049 (April 6, 2004) (*Carbon Steel Pipe and Tube*). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise warranted based on the facts on the record. We based EP on the packed C&F prices to the first unaffiliated customer in the United States.

[4] There was a typographical error in the notice of "Extension of Preliminary Results of Antidumping Duty Administrative Reviews;" the preliminary results of this review are actually due on July 30, 2004.

[5] 100 percent durum semolina and 100 percent whole wheat.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage handling and loading charges, and international freight. In addition, we increased the EP by the amount of the countervailing duties imposed that were attributable to an export subsidy, in accordance with section 772(c)(1)(C).

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Tat and Filiz's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Tat and Filiz's aggregate volume of home market sales of the foreign like product was greater than five percent of the companies' aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for both companies.

B. Arm's-Length Test

Tat and Filiz reported sales of the foreign like product to an affiliated end-user and an affiliated reseller. The Department calculates the NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arms's-length. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's-length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's-length prices. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (Nov. 15, 2002).

C. Cost of Production Analysis

1. Calculation of Cost of Production (COP)

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether each respondent's comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to packing and preparing the foreign like product for shipment, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in instances where we used revised data based on verification findings. *See* the company-specific calculation memoranda on file in the CRU, for a description of any changes that we made.

As noted above, we determined that the Turkish economy experienced high inflation during the POR. Therefore, to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that each respondent submit the product-specific cost of manufacturing (COM) incurred during each month of the period for which it reported home market sales. We then calculated an average COM for each product after indexing the reported monthly costs to an equivalent currency level using the Turkish wholesale price index from the *International Financial Statistics* published by the International Monetary Fund (IMF). We then restated the average COM in the currency value of each respective month. *See, e.g., Pasta from Turkey 5* and *Pasta from Turkey 4.*

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, for Filiz and Tat, we compared the weighted-average COP to the weighted-average per unit price of the comparison market sales of the foreign like product, to determine whether their respective sales had been made at prices below the COP within an extended period of time in substantial quantities. For Tat and Filiz, we determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Tat or Filiz's sales of a given product during the twelve-month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs (indexed for inflation), we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, for Tat and Filiz we disregarded the below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-factory or delivered prices to comparison market customers. We made deductions from the starting price for inland freight, warehousing, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing costs, respectively. In addition, we made circumstance of sale adjustments for direct expenses, including imputed credit, advertising, promotions, and warranties, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 351.411 of the Department's regulations, we based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using twelve-month average costs, as adjusted for inflation for each month of the twelve-month period, as described in the *Cost of Production Analysis* section above.

E. Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same LOT as the U.S. EP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales are at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales are at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Tat and Filiz reported only one level of trade in both the U.S. and home markets. We compared all EP sales to these home market sales. Therefore, no LOT adjustment was necessary.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see, Preliminary Calculation Memorandum* for each company on file in the CRU.

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and only used daily exchange rates. *See Carbon Steel Pipe and Tube.*

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the *Wall Street Journal. See, e.g., Pasta from Turkey 5* and *Pasta from Turkey 4.*

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Tat	10.86
Filiz	8.65

The Department will disclose the calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 51.49 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 38546 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties increased by the amount of antidumping and/or countervailing duties reimbursed.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–18036 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Revocation of the Antidumping Duty Order in Part: For the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results, partial rescission of antidumping duty administrative review and revocation in part.

SUMMARY: In response to requests by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Italy for the period of review ("POR") July 1, 2002, through June 30, 2003.

We preliminarily determine that during the POR, Barilla Alimentare, S.p.A. ("Barilla"), Corticella Molini e Pastifici S.p.A. ("Corticella") and its affiliate Pasta Combattenti S.p.A. ("Combattenti") (collectively, "Corticella/Combattenti"), Industria Alimentare Colavita, S.p.A. ("Indalco") and its affiliate Fusco S.r.l. ("Fusco") (collectively, "Indalco"), Pasta Lensi S.r.l. ("Lensi"), P.A.M. S.p.A. ("PAM"), Pastificio Riscossa F. lli Mastromauro, S.r.l. ("Riscossa"), and Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A. ("Russo"), sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties equal to the difference between the export price ("EP") or constructed export price ("CEP") and NV.

We preliminarily determine that during the POR, Pastificio Guido Ferrara S.r.l. ("Ferrara") did not make sales of the subject merchandise at less than NV (*i.e.*, sales were made at "zero" or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. Furthermore, requests for review of the antidumping order for the following eight companies were withdrawn: N. Puglisi & F. Industria Paste Alimentari S.p.A. ("Puglisi"), Rummo S.p.A. Molino e Pastificio ("Rummo"), Pastificio Antonio Pallante S.r.l. ("Pallante"), Industrie Alimentari Molisane S.r.l. ("IAM"), Pastificio Lucio Garofalo S.p.A. ("Garofalo"), Pastifico Fratelli Pagani S.p.A. ("Pagani"), La Molisana Industrie Alimentari S.p.a. ("La Molisana"), and Molino e Pastificio Tomasello S.r.l. ("Tomasello"). Because the withdrawal requests were timely and there were no other requests for review of the companies, we are rescinding the review for these companies. *See* 19 CFR 351.213(d)(i).

Finally, we preliminarily intend to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Ferrara because Ferrara sold the merchandise at not less than NV for a period of at least three consecutive years. *See* 19 CFR 351.222 (b)(2) and the "Revocation" section of this notice.

Interested parties are invited to comment on these preliminary results, partial rescission, and revocation. As a further matter, an analysis of the record evidence indicates that Corticella/Combattenti and its toll producer, Coopertive Lomellina Cerealicoltori S.r.l. (CLC), are affiliated. The Department recognizes that, given the nature of their affiliation, a related issue could arise with respect to whether there is a potential for manipulation of price or production and, if so, whether Corticella/Combattenti and CLC should receive the same antidumping duty rate. Therefore, the Department is also soliciting comments on this issue for consideration in the final results of review.

Parties who submit comments in this segment of the proceeding should also submit with them: (1) A statement of the issues and (2) a brief summary of the comments. Further, parties submitting written comments are requested to provide the Department with an electronic version of the public version of any such comments on diskette.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Young or Carrie Farley, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy; *see Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547. On July 2, 2003, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 68 FR 39511.

By July 31, 2003, we had received requests for review from petitioners,[1] and from fifteen individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(2). In addition, on July 31, 2003, Pasta Lensi S.r.l. ("Lensi") and Ferrara requested that the Department revoke the antidumping duty order with respect to their companies. *See* "Revocation" section of this notice.

On August 19, 2003, petitioners withdrew their request for administrative review of the antidumping duty order with respect to Puglisi.

On August 22, 2003, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2002, through June 30, 2003, listing these fifteen companies as respondents: Barilla, Rummo, Pallante, IAM, Pagani, PAM, Ferrara, Garofalo, Indalco, Riscossa, Russo, Corticella, La Molisana, Lensi, and Tomasello.[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 50752 (August 22, 2003) ("*Initiation Notice*").

On September 2, 2003, La Molisana withdrew its request for administrative review of the antidumping duty order. On September 8, 2003, Tomasello withdrew its request for administrative review of the antidumping duty order.

On September 10, 2003, we sent questionnaires to the twelve remaining companies.

On October 3, 2003, petitioners withdrew their request for administrative review of the antidumping duty order with respect to Pallante/IAM, Pagani, and Rummo. On October 14, 2003, Garofalo withdrew its request for administrative review of the antidumping duty order.

During the most recently completed segments of the proceeding in which Indalco and PAM participated, the Department found and disregarded sales

[1] New World Pasta Company; Dakota Growers Pasta Company; Borden Foods Corporation; and American Italian Pasta Company.

[2] Although the Department initiated this review on fifteen companies, included within that number were companies known to be affiliated, namely, Pallante/IAM.

that failed the cost test.[3] Pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production ("COP"). Therefore, we initiated cost investigations of these companies, and instructed the companies to fill out sections A–D[4] upon issuance of the initial questionnaire. The companies submitted their section D responses on October 31, 2003.

In the most recently completed segment of the proceeding involving Barilla,[5] the Department based its final determination on adverse facts available. Because the use of adverse facts available precluded the Department from determining whether sales below the COP would be disregarded from Barilla's home market sales response in that proceeding, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department requested that Barilla respond to section D of the questionnaire. Barilla submitted its section D response on November 3, 2003.

After several extensions, the respondents submitted their responses to the appropriate sections of the questionnaire during the months of October and November 2003. In its initial release of the antidumping questionnaire, the Department did not require Corticella, Ferrara, Lensi, Riscossa, or Russo to respond to section D of the questionnaire.

On September 12, 2003, we informed Ferrara and Russo that though we did not initially require them to complete section D, should the Department disregard sales below cost in the then on-going final results of the sixth review of pasta from Italy (for Ferrara), and the final results of the new shipper review of pasta from Italy (for Russo), they would be required to submit section D of the questionnaire. Ferrara opted to complete section D before the final results of the sixth review were completed, and submitted sections A–D on October 31, 2003. The Department, in the final results of the sixth review, did disregard sales that failed the cost test for Ferrara. *See Sixth Administrative Review of Pasta from Italy.* The Department also disregarded sales that failed the cost test for Russo in the final results of the new shipper review. *See Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy*, 69 FR 18869 (April 9, 2004). On April 20, 2004, we informed Russo that it was required to submit a section D response to the Department's questionnaire. Russo submitted its section D response on May 18, 2004.

In November 2003, petitioners submitted allegations of sales below cost against Corticella and Riscossa. We determined that petitioners' cost allegations provided a reasonable basis to initiate COP investigations, and as a result, we initiated cost investigations of these two companies. *See* the company-specific COP initiation memoranda, dated December 18, 2003, in the case file in the Central Records Unit ("the CRU"), main Commerce building, room B–099. Also on December 18, 2003, we informed these two companies that they were required to respond to section D of the antidumping questionnaire. *See* December 18, 2003, letters from the Department to these respondents requiring section D questionnaire responses, in the CRU. On January 20, 2004, we received responses to the section D questionnaires from Corticella and Riscossa.

On March 17, 2004, the Department published an extension of preliminary results of this review, extending its preliminary results until July 30, 2004.[6] *See Certain Pasta from Italy and Turkey: Extension of Preliminary Results of 2002/2003 Antidumping Duty Administrative Reviews*, 69 FR 12641 (March 17, 2004).

During the months of January, February, March, April, and May of 2004, the Department issued supplemental, second supplemental, and third supplemental questionnaires to each respondent, as applicable.

We conducted verification of the sales information as follows: (1) Barilla from June 7 through June 11, 2004; (2) Corticella from May 24 though June 11, 2004; (3) Ferrara from March 22 through March 26, 2004; (4) Lensi from May 17 though May 21, 2004; (5) PAM from March 15 through March 19, 2004; and (6) Riscossa from June 21 through June 25, 2004. We verified the cost information submitted by: (1) Barilla from June 14 through June 18, 2004; (2) Corticella from May 24 though June 4, 2004; (3) Ferrara from March 29 through April 1, 2004; and (4) Riscossa from June 14 through June 18, 2004. We verified the CEP information submitted by (1) Lensi from March 29 though March 31, 2004; and (2) Barilla from June 30 through July 2, 2004.

Partial Rescission

In September and October 2003, Garofalo, La Molisana, Tomasello, and petitioners with respect to Pallante/IAM, Pagani, and Rummo withdrew their requests for administrative review of the antidumping duty order. Because the requests were timely filed, *i.e.*, with 30 days of publication of the *Initiation Notice*, and because there were no other requests for review of the above-mentioned companies, we are rescinding the review with respect these companies in accordance with 19 CFR 351.213(d)(1).

Scope of Review

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience

[3] The most recently completed review in which Indalco and PAM participated was the sixth administrative review. *See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004) ("*Sixth Administrative Review of Pasta from Italy*").

[4] Section A: Organization, Accounting Practices, Markets and Merchandise. Section B: Comparison Market Sales. Section C: Sales to the United States. Section D: Cost of Production and Constructed Value.

[5] The most recently completed review in which Barilla participated was the fourth administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Administrative Review, and Revocation of Antidumping Duty Order in Part: Certain Pasta from Italy*, 67 FR 300 (January 3, 2002).

[6] As a result of a typographical error, the Department published the preliminary signature date as July 29, 2004. The actual signature date is July 30, 2004.

and customs purposes, the written description of the merchandise subject to the order is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information provided by Barilla, Corticella, Ferrara, and Riscossa, the sales information provided by Lensi and PAM, and the CEP information provided by Barilla and Lensi. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are detailed in the company-specific verification reports placed in the case file in the CRU. We made minor revisions to certain sales and cost data based on verification findings. *See* the company-specific verification reports and calculation memoranda, in the CRU.

Use of Partial Facts Available

The Department has determined preliminarily that the use of partial facts available is appropriate for purposes of determining the preliminary dumping margin for subject merchandise sold by Barilla. Specifically, the Department has applied partial facts available for various expenses and adjustments with respect to the margin program for Barilla. *See* Barilla's July 30, 2004, Preliminary Calculation Memorandum ("Barilla's Preliminary Calculation Memorandum").

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

From June 30, through July 2, 2004, the Department conducted a verification of Barilla's questionnaire response at the headquarters of the company's U.S. affiliate in Chicago, Illinois. At verification, the Department's verifiers asked Barilla to present minor changes, if any, to its questionnaire response resulting from the company's preparation for verification. The Department previously notified Barilla of these requirements in its May 26, 2004, verification outline. *See* the May 26, 2004, letter from the Department to Barilla, in which the verification outline is transmitted. In response to the Department's request, Barilla submitted a list of minor corrections as Verification Exhibit 1.

During the verification of Barilla's U.S. discount and rebate fields, however, the verifiers discovered certain errors and omissions that were not among those listed in Barilla's minor correction exhibit. Specifically, in its questionnaire response, Barilla indicated that it offered discounts to its U.S. customers. *See* page C–29 of Barilla's October 31, 2003, section C response. Barilla also explained in its questionnaire response that it offered rebates based on contracts with its individual customers. *See Id.* at page C–31 and C–32. However, during verification, the verifiers discovered that Barilla failed to report a number of cash discounts offered to its CEP customers and failed to report rebates granted to one of its CEP customers during the POR. For a more detailed discussion, *see* Memorandum to Eric Greynolds, from Lyman Armstrong and Joy Zhang, Re: Verification of the Sales Response of Barilla Alimentare and Barilla America (collectively, "Barilla") in the 02/03 Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy ("Barilla Verification Report"), available in the CRU.

As long recognized by the Court of International Trade ("CIT"), the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States*, 641 F. Supp. 31, 39–40 (CIT 1987). In its narrative questionnaire response, Barilla indicated that it offered certain discounts and rebates to its U.S. customers during the POR. However, during verification the verifiers discovered that Barilla failed to report certain discounts for a small subset of its U.S. sales and rebates for one of its CEP customers. Therefore, in accordance with section 776(a)(2)(B) of the Act, we are applying partial facts otherwise available in calculating Barilla's dumping margin. As facts available, the Department applied a cash discount to all sales to all of Barilla's CEP customers. Further, for the one customer for which Barilla failed to report a rebate, the verifiers were able to establish the portion of the rebate that Barilla granted the customer during 2002. Therefore, as partial facts available, we applied the rebate in effect for that customer in 2002 to the portion of 2003 covered by the POR. *See* Barilla's Preliminary Calculation Memorandum.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. When there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value ("CV"), in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing ("VCOM") between each U.S. model and the most similar home market model selected for comparison:

On page 7 of its April 2, 2004, supplemental questionnaire response ("Russo's supplemental response"), Russo requested separate treatment for pasta produced at the Di Nola production workshop in Gragnano, Italy.[7] The Di Nola facility produces only artisan pasta made and packaged by hand, using traditional techniques. The traditional artisan techniques used to produce pasta at the Gragnano facility imbue the pasta with significant differences in physical characteristics from pasta produced in Russo's industrial Cicciano production facility. Namely, the pasta has an irregular, hand-made appearance, a rougher surface texture, and superior texture and taste when compared to commodity pasta. In addition, the company uses upscale packaging that prominently labels the product as artisan, specialty pasta; the packaging and labeling of the pasta make up over 50 percent of its final value. *See* Russo's supplemental response at 6. The company markets the product separately to high-end boutiques, specialty and gourmet food shops, and to upscale restaurants. *Id.*

Due to the heavy reliance on manual labor in the production process, the pasta produced at the Gragnano workshop has significantly higher costs of production and selling prices relative

[7] Russo and Di Nola merged into one company effective January 1, 2003.

to the commodity pasta produced at Russo's industrial plant in Cicciano, Italy. *See* Russo's October 31, 2003, response to sections A–C of the Department's questionnaire ("Russo's sections A–C response"); *see also* Russo's May 18, 2004, response to section D of the Department's questionnaire ("Russo's section D response"). For a detailed discussion of the production processes at both facilities, *see* the December 24, 2003, memorandum to Melissa G. Skinner regarding "Whether to Collapse Pastificio Carmine Russo, S.p.A ("Russo") and Di Nola S.p.A. ("Di Nola") in the Preliminary Results" ("Russo Collapsing Memo"), originally on the record of the recently-completed new shipper review of pasta from Italy, and placed on the record of this review by the Department.

These differences in physical characteristics, in addition to the differences in the packaging and labeling of the products, are so consequential to the purchaser of either product that the two products share virtually no unaffiliated customers; the products do not even compete in the same market. *See* Russo's supplemental response at 2 and 5–6. In the *Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy*, 69 FR 319, 321 (January 5, 2004) ("*Russo New Shipper Prelim*"), the Department determined that Russo and Di Nola, who had not yet merged into one company, should not be collapsed on the basis that either facility would require substantial retooling to produce the merchandise of the other. In the Russo Collapsing Memo at 3, we stated that "though Russo and (Di Nola) both produce subject merchandise, the process by which each company produces the subject merchandise is completely different, resulting in qualitatively different products" (italics added). We also stated that the "differences in the production process * * * of each company are substantial, and create qualitative differences between the products." *See* Russo Collapsing Memo at 4 (italics added).

The Department has a wealth of past precedent to support a segregation of products for purposes of calculating NV based on differences in physical characteristics, as well as cost and price differences. In past reviews, the Department has assigned separate product-control numbers to different types of pasta, "where there has been substantial evidence on the record that demonstrated physical and cost differences. * * *" *See* page 23 of the February 3, 2003, memorandum to Faryar Shirzad, Assistant Secretary, for Import Administration, "Issues and Decision Memorandum for the Fifth Antidumping Duty Administrative Review;" and page 4 of the January 3, 2002, memorandum to Richard W. Moreland, Acting Assistant Secretary, for Import Administration, "Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review; Final Results of Review," both on file in the CRU. *See also Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 64 FR 6615 (February 10, 1999); and *Certain Pasta from Turkey: Final Results of Antidumping Administrative Review*, 65 FR 77857 (December 13, 2000).

Moreover, in a March 1, 2004, decision, the CIT upheld the Department's decision in the fifth review of certain pasta from Italy to classify Ferrara's bronze-die and teflon-die pasta (both industrially produced) as separate for product-matching purposes. *See New World Pasta Company* v. *United States*, 316 F. Supp. 2d 1338, 1356 (CIT 2004). In that decision, the CIT stated that "generally, Commerce has wide latitude in choosing what physical characteristics to consider" for product-matching purposes. *Id.* at 1354.

The physical, cost, and price differences in this case are so significant that the Department has found that the products at issue are qualitatively different and that the production facilities for either product would require substantial retooling to produce the other. *See* Russo New Shipper Prelim; and Russo Collasping Memo. In light of such record evidence, the Department has preliminarily determined to assign different product-matching control numbers to pasta produced at Russo's industrial Cicciano facility and the artisan pasta produced at the Di Nola workshop. *See* the July 30, 2004, Memorandum to the File, RE: Preliminary Calculation Memorandum for Russo for the specific calculation methodology.

Proposed Modifications to Wheat Codes

Ferrara, PAM, and Lensi have classified a variety of wheats used in the production of pasta as separate wheat codes, in addition to the two wheat codes outlined in the questionnaire.[8] In the *Pasta Investigation*, we established that differences in wheat quality may be commercially significant, as measured by ash and gluten content[9] and cost. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30346 (June 14, 1996) ("*Pasta Investigation*"). Where respondents have been able to justify differences due to ash and gluten content, as well as cost, the Department has found that these differences result in more appropriate product matches, as contemplated by section 771(16) of the Act. *Id.*

Ferrara reported two wheat codes in its sales database. We preliminarily determine that Ferrara's wheat code 2 has met the standards outlined in the *Pasta Investigation* for classification as a separate wheat code. Specifically, Ferrara's wheat code 2 has commercially significant ash content differences from its wheat code 1. *See* Ferrara's December 17, 2003, Questionnaire Response at 5, and Exhibit 4 at 3. *See also* July 30, 2004, Memorandum Re: Verification of the Sales and Cost Responses of Ferrara in the 02/03 Administrative Review of the Antidumping Order of Certain Pasta from Italy ("Ferrara VR") at Exhibit 12 at 13, which contains ash content information. Moreover, Ferrara's wheat code 2 is classified differently from its wheat code 1 under Italian law, which sets standards for ash and protein characteristics for pasta manufactured and sold in Italy. *See* Ferrara's March 1, 2004, Questionnaire Response, Exhibit 12 at 5–24. In addition, Ferrara's raw material cost for wheat code 2 is more than thirty percent different than its cost for wheat code 1. *See* Ferrara VR, Exhibit 4 at 1.

We have also preliminarily determined that PAM's wheat code 5 has met the standard outlined in the *Pasta Investigation* to warrant classification as a separate wheat code. Specifically, PAM's wheat code 5 has commercially significant ash and protein content differences from its wheat code 1. *See* PAM's February 24, 2004, Questionnaire Response at 7 and the July 30, 2004, Memorandum Re: Verification of the Sales and Cost Responses of PAM in the 02/03 Administrative Review of the Antidumping Order of Certain Pasta from Italy ("PAM VR"), Exhibit 5 at 3 for the details of the ash and protein content. Moreover, PAM's wheat code 5 is classified differently under Italian law, which sets standards for ash and protein characteristics for pasta manufactured and sold in Italy. *See* PAM VR at 11. In addition, PAM's raw material cost for wheat code 5 is approximately ten percent different than

[8] 100 percent durum semolina and 100 percent whole wheat.

[9] Ash content is a measurement of minerals present in pasta. Gluten is a protein compound and is formed from the proteins in grains. Gluten content is a measurement of gluten found in pasta.

its cost for wheat code 1 and 2. *See* PAM VR, Exhibit 5 at 1.

We have preliminary determined that record evidence pertaining to PAM's wheat code 1 does not warrant a separate wheat code. Although slight cost and ash and protein content differences were presented, we find that these differences are not commercially significant and therefore do not merit a separate wheat code. *See* PAM VR, Exhibit 5 at 1 and 3. Therefore, PAM's wheat codes 1 and 2 will be collapsed for the purposes of these preliminary results.

We have also preliminarily determined that record evidence pertaining to Lensi's wheat codes 2 and 4 do not warrant a separate classification. Although Lensi provided explanations of the types of wheat it uses, and provided the percentages of each type that make up the different wheat mixes used in the production of its pasta, Lensi provided no ash or protein content information, nor did it provide evidence of a cost differential to demonstrate that these wheat mixes differ in a commercially significant way. Therefore, Lensi's wheat codes 2 and 4 will be collapsed for the purposes of these preliminary results.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. *See* the company-specific verification reports and calculation memoranda, available in the CRU.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed cost-insurance-freight ("CIF"), ex-factory, free-on-board ("FOB"), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer). In addition, when appropriate, we increased EP or CEP as applicable, by an amount equal to the countervailing duty rate attributed to export subsidies in the most recently completed administrative review, in accordance with section 772(c)(1)(C) of the Act.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Barilla, Corticella/Combattenti, Ferrara, Indalco, PAM, Riscossa, Russo, and Lensi reported the resale of subject merchandise purchased in Italy from unaffiliated producers. In those situations in which an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the EP would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50876 (September 23, 1998). In the instant review, we determined that it was reasonable to assume that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because virtually all enriched pasta is sold to the United States. *See, e.g., Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 68 FR 47020, 47028 (August 7, 2003). Accordingly, consistent with our methodology in prior reviews (*see id.*), when a respondent purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded these sales of the purchased pasta from the margin calculation for that respondent. Where the purchased pasta was commingled with the respondent's production and the respondent could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales database and the respondent was unable to identify resale transactions, we included the sales of commingled purchased pasta in our margin calculations.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because each respondent, with the exception of Lensi, had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers except Lensi.

Because Lensi did not have an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, the Department determined, in accordance with section 773(a)(1)(C) of the Act and section 351.404(b)(2) of the Department's regulations, to use a third-country market, the United Kingdom, as Lensi's comparison market. We compared Lensi's volume of third-country sales in the United Kingdom of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B)(ii) and (C) of the

Act, and section 351.404(c)(ii) of the Department's regulations, because Lensi had an aggregate volume of third-country sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the third-country market of the United Kingdom was viable for Lensi.

B. Arm's-Length Test

Barilla and Corticella/Combattenti reported sales of the foreign like product to an affiliated end-user and an affiliated reseller. The Department calculates the NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm's length. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's-length prices. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (Nov. 15, 2002).

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of Barilla, Corticella, Ferrara, Indalco, PAM, Riscossa, and Russo, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses ("SG&A") and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in instances where we used data with minor revisions based on verification findings. *See* the company-specific calculation memoranda on file in the CRU, for a description of any changes that we made.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities." *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for Barilla, Corticella, Ferrara, Indalco, PAM, Riscossa, and Russo, for purposes of this administrative review, we disregarded below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* the company-specific calculation memoranda on file in the CRU, for our calculation methodology and results.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. We added interest revenue. In accordance with sections 773(a)(6) (A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale ("COS") adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the "commission offset." Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using POR-average costs.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the "Export Price and Constructed Export Price" section of this notice.

E. Calculation of Normal Value Based on Constructed Value

When we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing ("COM") of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Ferrara and Indalco in connection with the production and sale of the foreign like product in the comparison market.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section

773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade ("LOT") as the EP and CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to § 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison-market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997). Specifically in this review, we did not make an LOT adjustment for any respondent. However, we are preliminarily granting a CEP offset for Barilla and Lensi.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the calculation memoranda, all on file in the CRU.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Revocation

On July 31, 2003, Lensi and Ferrara submitted requests for revocation of the antidumping duty order with respect to their sales of the subject merchandise as directed under 19 CFR 351.222(b). The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires that one or more exporters and producers covered by the order and desiring revocation submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Both Lensi and Ferrara provided the certifications and agreements required by 19 CFR 351.222(e)(1).

Upon receipt of such a request, the Department, pursuant to 19 CFR 351.222(b)(2), will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV.

Both Lensi and Ferrara had *de minimis* dumping margins in the past two preceding reviews. However, in the current review we preliminarily find that Lensi sold subject merchandise at less than NV. *See* July 30, 2004, Memorandum to the File, RE: Preliminary Calculation Memorandum for Lensi. Because we preliminarily find that Lensi made sales of subject merchandise at less than NV, we preliminarily intend not to revoke the antidumping order with respect to Lensi. Regarding Ferrara, the Department preliminarily finds that Ferrara received a *de minimis* rate for the current review. *See* July 30, 2004, Memorandum to the File, RE: Preliminary Calculation Memorandum for Ferrara. Therefore, we preliminarily find that Ferrara sold subject merchandise at not less than NV for three consecutive reviews as required under § 351.222(b)(2)(i) of the Department's regulations.

In determining whether three years of no dumping establishes a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue, *i.e.*, did the company make sales in commercial quantities. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). The Department preliminarily finds that Ferrara sold subject merchandise to the United States in commercial quantities during each of the consecutive three years as directed by 19 CFR 351.222(e)(1)(ii). *See* the Ferrara VR at 31 and Exhibit 35; *see also* Ferrara's March 1, 2004, Questionnaire Response at Exhibit 17. Therefore, we reasonably conclude that the zero or *de minimis* margins calculated for Ferrara in each of the last three administrative reviews are reflective of the company's normal commercial experience.

With respect to 19 CFR 351.222(b)(2)(ii), in considering whether continued application of the order is necessary to offset dumping, "the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case." *Proposed Regulation Concerning the Revocation of Antidumping Duty Orders*, 64 FR 29818, 29820 (June 3, 1999). Thus, based upon three consecutive reviews resulting in zero or

de minimis margins, the Department presumes that the company requesting revocation is not likely to resume selling subject merchandise at less than NV in the near future unless the Department has been presented with evidence to demonstrate that dumping would likely resume if the order were revoked. In this proceeding, we have not received any evidence that demonstrates that Ferrara would likely resume dumping in the future if the order were revoked. Therefore, we preliminarily determine that the order is no longer necessary to offset dumping for Ferrara.

Because all requirements under the regulation have been satisfied, if these preliminary findings are affirmed in our final results, we intend to revoke the antidumping duty order with respect to subject merchandise produced and exported by Ferrara. Also, in accordance with 19 CFR 351.222(f)(3), if these findings are affirmed in our final results, we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct CBP to refund any cash deposit.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Barilla	7.10
Corticella/Combattenti	4.00
Ferrara	0.30
Indalco	5.41
Lensi	6.63
PAM	4.79
Riscossa	1.16
Russo	9.22
All Others	11.26

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in such briefs, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–18037 Filed 8–5–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to a request by the Petitioner, FMC Corporation. The period

of review is July 1, 2002, through June 30, 2003.

We have preliminarily determined that U.S. sales have been made at not less than normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess no antidumping duties on the exports subject to this review.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: John D. A. LaRose or Christopher C. Welty, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3794 or (202) 482–0186 respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on persulfates from the People's Republic of China (PRC) covering the period July 1, 2002, through June 30, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 39511 (July 2, 2003).

On July 31, 2003, in accordance with 19 CFR 351.213(b), the Petitioner, FMC Corporation, requested an administrative review of Shanghai AJ Import & Export Corporation (Ai Jian) and Degussa-AJ (Shanghai) Initiators Co. (Degussa-AJ). We published a notice of initiation of this review on August 22, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003).

On August 13, 2003, we issued an antidumping questionnaire to Ai Jian and Degussa-AJ. Ai Jian and Degussa-AJ jointly submitted a timely response to sections A, C and D of the questionnaire on October 27, 2003. On December 15, 2003, the Petitioners submitted comments on this response.

We issued a supplemental questionnaire to Ai Jian and Degussa-AJ on February 13, 2004. We received the response to this questionnaire on March 17, 2004.

On March 5, 2004, Ai Jian submitted publicly available information for consideration in valuing the factors of production. The Petitioner submitted information for this purpose on March 10, 2004.

On June 17, 2004, we issued a supplemental questionnaire to Ai Jian. We received a response to this questionnaire on June 28, 2004.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as adapted and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a *de facto* absence of government control, the Department considers the following four factors: (1) Whether the respondent sets its own export prices independently from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

With respect to Ai Jian, for purposes of our final results covering the period of review (POR) July 1, 2001, through June 30, 2002, the Department found an absence of *de jure* and *de facto* government control of its export activities and determined that it warranted a company-specific dumping margin. *See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030, (Dec. 5, 2003) (*Persulfates Fifth Review Final*). For purposes of this POR, Ai Jian has responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in *Persulfates Fifth Review Final* and continues to demonstrate an absence of government control, both in law and in fact, with respect to Ai Jian's exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the same reasons as in the *Persulfates Fifth Review Final*, we have granted Ai Jian a separate rate for purposes of this administrative review.

Export Price

We calculated export price (EP) in accordance with section 772(a) of the Tariff Act of 1930, as amended (the Act), because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise warranted given the facts on record. We calculated EP based on packed, cost-insurance-freight (CIF) U.S.-port, or free-on-board, PRC-port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for ocean freight services, which were provided by market economy suppliers. We also deducted from the starting price, where appropriate, an amount for foreign inland freight, foreign brokerage and handling, and marine insurance expenses. As these movement services were provided by NME suppliers, we valued them using Indian rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, *see* the "Normal Value" section of this notice, below.

For foreign inland freight, we obtained publicly-available information which was published in the October 2002 through March 2003 editions of *Chemical Weekly*. For foreign brokerage

and handling expenses, we used a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (Oct. 3, 2001), and used in the 2000–2001 administrative review of freshwater crawfish tail meat from the PRC. See the memorandum to the file from Mathew Renkey and Adina Teodorescu dated September 30, 2002, and entitled "Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values Memorandum," which is on file in the Central Records Unit (CRU), Room B–099 of the main Commerce building. We inflated the per kilogram price (in rupees) to the POR using wholesale price index (WPI) data from the International Monetary Fund (IMF). For marine insurance, we used a price quote obtained from Roanoke Trade Services, Inc., a provider of marine insurance. *See* the memorandum to the File from Greg Kalbaugh entitled "Marine Insurance Rates," in the administrative review of sebacic acid from the PRC, dated July 9, 2002, and the memorandum to the File from Christopher C. Welty entitled "Preliminary Valuation of Factors of Production" for the preliminary results of the 2002–2003 administrative review of persulfates from the People's Republic of China, dated July 30, 2004 (FOP Memo), which are on file in the CRU. We inflated this value to the POR using WPI data from the IMF.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that: (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise.

India has been identified as a country that is at a level of economic development comparable to that of the PRC. *See* the February 12, 2004, memorandum from Ronald Lorentzen to Louis Apple entitled "Surrogate Country Selection," which is on file in the CRU. Moreover, for purposes of the most recent segment of this proceeding, we found that India is a significant producer of persulfates. *See Persulfates Fifth Review Final*. For these preliminary results, we continue to find that India is a significant producer of persulfates. Accordingly, we find that India fulfills both statutory requirements for use as a surrogate country and have continued to use India as the surrogate country in this administrative review. We have therefore calculated NV using Indian values for the PRC producers' factors of production. We have obtained and relied upon publicly available information wherever possible.

B. Factors of Production

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value factors of production. However, the Department's regulations also provide that where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *Id.*; *see also Lasko Metal Products* v. *United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994).

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Ai Jian for the POR. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the FOP Memo.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. Where appropriate, we adjusted surrogate values to reflect inflation up to the POR using the WPI published by the IMF. In accordance with this methodology, we valued the factors of production as follows:

To value ammonium sulfate, caustic soda, and sulfuric acid, we used public information from the Indian publication *Chemical Weekly*. For caustic soda and sulfuric acid, because price quotes reported in *Chemical Weekly* are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulfuric acid used by Degussa-AJ, Ai Jian's PRC supplier. Where necessary, we adjusted the values reported in *Chemical Weekly* to exclude sales and excise taxes. For potassium sulfate and anhydrous ammonia, we relied on import prices reported in the *Monthly Statistics of the Foreign Trade of India* (*MSFTI*), and contained in the *World Trade Atlas*. All values were contemporaneous with the POR; therefore, it was not necessary to adjust for inflation.

During the POR, Degussa-AJ self-produced ammonium persulfates, which is a material input in the production of potassium persulfates and sodium persulfates. In order to value ammonium persulfates, we calculated the sum of the materials, labor, and energy costs based on the usage factors submitted by Degussa-AJ in its questionnaire responses. Consistent with our methodology used in *Persulfates Fifth Review Final*, we then applied this value to the reported consumption amounts of ammonium persulfates used in the production of potassium and sodium persulfates.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used data from the *International Energy Agency's Key World Energy Statistics 2003* report. For further discussion, see the FOP Memo.

To value water, we relied on public information reported in the October 1997 publication of *Second Water Utilities Data Book: Asian and Pacific*

Region. We adjusted this value to reflect inflation up to the POR using the WPI published by the IMF. To value coal, we relied on import prices reported in the *MSFTI*, and contained in the *World Trade Atlas*.

For the reported packing materials—polyethylene bags, woven bags, polyethylene sheet/film and liner, fiberboard, paper bags, and wood pallets—we relied on import prices reported in the MSFTI, and contained in the *World Trade Atlas*.

As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We made adjustments to account for freight costs between the suppliers and Degussa-AJ's manufacturing facilities for each of the factors of production identified above. In accordance with our practice, for inputs for which we used CIF import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61977 (Nov. 20, 1997) and the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997).

For factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied on the experience of a producer of identical merchandise, Gujarat Persalts (P) Ltd. ("Gujarat"), as reflected in its March 31, 2002, annual report. See the *Preliminary Valuation of Factors of Production Memorandum*, dated July 30, 2004, at pages 7 and 8 ("*Factors of Production Memorandum*"). Because we believe that SG&A labor is not classified as part of the SG&A costs reflected on Gujarat's financial statements, we have accounted for SG&A labor hours by calculating the number of labor hours per MT of production and adding this amount to the total labor figure. For further discussion, see the July 30, 2004, memorandum from the Team, entitled *U.S. Price and Factors of Production Adjustments for the Preliminary Results*. We calculated factory overhead as a percentage of the total raw materials, labor, and energy costs for subject merchandise. See the *Factors of Production Memorandum*, at pages 7 and 8.

The Department did not rely on the financial statements of two producers of comparable merchandise, National Peroxide Ltd. (for the surrogate profit ratio) and Asian Peroxides Limited (for the surrogate factory overhead and SG&A ratios), as requested by the Petitioner, because these producers did not produce persulfates during their respective fiscal years. *See Issues and Decision Memorandum for the 2001—2002 Antidumping Duty Administrative Review of Persulfates from the People's Republic of China*, at Comment 1 (December 5, 2003); *see also, Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (Feb. 10, 2003) and accompanying decision memorandum at *Comments 9 and 10*. The Department's NME practice establishes a preference for selecting surrogate value sources that are producers of identical merchandise, provided that the surrogate value data is not distorted or otherwise unreliable. *See id; see also, Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review* (July 31, 2003). Based upon the Department's analysis for the preliminary results, we do not believe we have a sufficient basis at this time to reach the conclusion that the surrogate data from Gujarat is distorted.

On March 10, 2004, and on June 4, 2004, the Petitioner submitted information on the record for the purpose of demonstrating that the use of surrogate financial information from Gujarat would distort the production experience of respondent Degussa-AJ, specifically pointing to differences in size and scale between the Indian persulfates producer and the respondent that would distort the factory overhead and SG&A ratios applied to the respondent. The Petitioner also submitted information to support the use of data from Asian Peroxides Limited, a producer of comparable merchandise, as a source of surrogate values for factory overhead and SG&A ratios, and the use of data from National Peroxides, Ltd. as a source for the surrogate value for profit. On July 26, 2004, and July 27, 2004, the Petitioner made additional submissions addressing the differences between batch and continuous chemical production processes, the types of equipment used in batch and continuous chemical production processes, and the nature of Gujarat's chemical production processes. On July 30, the Respondent responded to the Petitioner's filings. In a number of respects, the information the Petitioner has provided is different from and expands upon the information submitted in prior reviews that the Department has addressed. Moreover, we note that the Department had limited time to examine the July 26, 2004, and July 27, 2004 submissions by the Petitioner. The information presented by the Petitioner warrants further clarification and development prior to the final results. This clarification and development will entail an examination of: (1) The difference between batch and continuous processes in the production of persulfates; (2) the equipment and capital investments required by these processes; (3) the impact of scale and size on the production process; and (4) the usage and costs of raw material inputs, the overhead structure, and the use of a sales labor force. Therefore, the Department will open the record of this proceeding subsequent to the publication of this notice in the **Federal Register** to collect additional information. In particular, the Department intends to issue a set of questions to the Petitioner requesting certain clarifications and additional information regarding the Petitioner's claims that Gujarat's financial ratios are distortive. All interested parties are encouraged to comment on the current and additional information on the record regarding this issue. In the event that the Department determines that the surrogate financial ratios should be revised from the ones used in these preliminary results, parties will be afforded a meaningful opportunity to comment on the new valuation methodology and margin calculations. Taking these comments into consideration, the Department will then reach the final results of this administrative review.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	0.00

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the

final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs, within 120 days of the publication of these preliminary results.

The Department will determine and CBP shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to CBP upon completion of this review. The final results of this review will be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

For assessment purposes in this case, we do not have the information to calculate entered value. Therefore, we have calculated importer-specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis* (*i.e.* less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the EPs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ai Jian will be that established in the final results of this administrative review; (2) for any company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 119.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) for all other non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–18035 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China; Final Results of the Expedited Sunset Review of Antidumping Duty Order; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Expedited sunset review of antidumping duty order on sebacic acid from the People's Republic of China; final results.

SUMMARY: On April 1, 2004, the Department of Commerce ("the Department") initiated a sunset review of sebacic acid from the People's Republic of China ("China").[1] On the basis of the notice of intent to participate, adequate substantive comments filed on behalf of the domestic interested parties, and an inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

DATES: Effective August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2004, the Department initiated a sunset review of the antidumping duty order on sebacic acid from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act") (69 FR 17129). The Department received a notice of intent to participate on behalf of SST Materials Inc. d/b/a Genesis Chemicals, Inc. ("Genesis"), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of sebacic acid. We received a complete response from Genesis within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). We received no response from any interested party respondents in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this antidumping duty order.

This order remains in effect for all Chinese manufacturers, producers, and exporters, except for exporter, Tianjin Chemicals Import & Export Corporation with respect to subject merchandise produced by Hengshui.[2]

Scope of the Order

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake. Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings. Sebacic acid is currently classifiable under subheading 2917.13.00. of the

[1] *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 17129 (April 1, 2004) ("Initiation Notice").

[2] *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part*, 67 FR 69719 (November 19, 2002).

Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated July 30, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading "August 2004." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on sebacic acid from China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

Manufacturers/exporters/producers	Weighted-average margin (percent)
Sinochem Jiangsu Import & Export Corporation.	85.48
Tianjin Chemicals Import & Export Corporation.	Revoked
Guangdong Chemicals Import & Export Corporation.	57.00
Sinochem International Chemicals Company.	43.72
China-wide rate	243.40

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely 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 violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–17935 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to requests from Ugine and ALZ France S.A. (U&A France), (the Respondent), and Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization (collectively, the Petitioners), the U.S. Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSS) from France for the period July 1, 2002, through June 30, 2003. The Department preliminarily determines that U&A's sales of SSSS in the United States were made at less than normal value (NV). If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of U&A France's merchandise during the period of review. The preliminary results are listed in the section titled "Preliminary Results of Review," *infra*.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Sebastian Wright or Mark Hoadley, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–5254 and 202–482–3148.

Background

On July 27, 1999, the Department published the amended final determination and antidumping duty order on SSSS from France in the **Federal Register**. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France*, 64 FR 40562 (July 27, 1999) (*Antidumping Duty Order*). On July 2, 2003, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on stainless steel sheet and strip in coils from France for the period July 1, 2002, through June 30, 2003. *See Notice of Opportunity to Request Administrative Review of Antidumping Duty or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 39511 (July 2, 2003). On July 30, 2003, the Petitioners requested that the Department conduct a review of U&A France's sales or entries of merchandise subject to the Department's antidumping duty order on SSSS from France. On July 31, 2003, U&A France, a producer and exporter of subject merchandise, also requested that the Department conduct a review of U&A France's sales or entries of subject merchandise for the POR. On August 22, 2003, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period July 1, 2002, through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). On September 10, 2003, the Petitioners also filed a timely request for a duty absorption review in accordance with section 751(a)(4) of the Act, and section 351.213(j)(1) of the Department's regulations.

On September 8, 2003, the Department issued a questionnaire to U&A France. On September 24, 2003, U&A France requested an extension in which to file its response to Section A of the Department's questionnaire. On September 26, the Department issued a letter granting U&A France an extension for Section A responses to October 14, 2003. On October 14, 2003, U&A France filed its response to Section A.[1]

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells the merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests

On October 8, 2003, U&A France requested an extension until November 14 in which to file its response to Sections B, C, D, and E of the Department's questionnaire. On October 10, 2003, the Department sent U&A France a letter granting a partial extension until October 31, 2003, for submitting Sections B, C, D, and E.

On October 20, 2003, the Department sent a letter to U&A France requesting duty absorption information. On October 24, 2003, U&A France sent a letter to the Department requesting a second extension on Sections B, C, D, and E of the Department's questionnaire. On October 29, the Department sent U&A France a letter granting an extension until November 21 for the submission of Sections B, C, D, and E of the questionnaire. On November 19, 2003, the Department sent U&A France a second letter requesting duty absorption information. On November 21, 2003, U&A France submitted its responses to Sections B, C, D, and E of the Department's questionnaire. On November 26, 2003, the Petitioners submitted their comments on U&A France's response to Section A of the Department's questionnaire. On December 2, 2003, U&A France submitted information on packing.

On December 22, 2003, the Department sent U&A France a supplemental Section A questionnaire. On December 24, 2003, U&A France sent the Department a letter requesting an extension of two weeks in which to submit its responses to the supplemental Section A questionnaire. On December 29, 2003, the Department sent a letter to U&A France granting the requested two-week extension.

On January 13, 2004, the Petitioners submitted their comments to U&A France's responses to sections B, C, D, and E of the Department's questionnaire. On January 14, 2004, the Petitioners sent the Department a letter to supplement their January 13, 2004, letter.

On January 14, 2004, U&A France sent the Department a second request for an extended deadline for supplemental Section A. On January 16, 2004, the Department sent a letter to U&A France granting a partial extension of two weeks for the deadline to the supplemental Section A questionnaire. On January 30, 2004, U&A France sent another request for the Department to further extend the deadline for supplemental Section A by three days. On January 30, 2004, the Department sent U&A France a letter granting this extension for supplemental Section A, extending the deadline to February 6, 2004.

On February 3, 2004, the Department sent U&A France a letter requesting information on downstream sales of subject merchandise. On February 10, 2004, U&A France submitted its response to the Department's February 3, 2004, letter regarding downstream sales. On March 24 and March 25, 2004, the Department sent requests for supplemental information to U&A France's responses to Sections B and C of the questionnaire. On April 8, 2004, U&A France sent the Department a letter requesting an extension until April 21 in which to submit its responses to supplemental Sections B and C. On April 9, the Department sent a letter to U&A France extending the deadline for supplemental Sections B and C, as well as information on downstream sales, to April 21, 2004.

On April 19, 2004, the Department sent U&A France a supplemental questionnaire for sections D and E. On April 21, 2004, U&A France submitted its responses to supplemental sections B and C of the Department's March 24 and March 25 questionnaires. On April 23, 2004, U&A France sent the Department a letter requesting an extension of the deadline for supplemental Sections D and E. On April 26, 2004, the Department granted U&A France's deadline extension request. On May 10, 2004, U&A France sent a letter requesting an additional deadline extension for supplemental Sections D and E. On May 11, 2004, the Department sent a letter to U&A France granting the extension request and establishing a new deadline of May 19, 2004.

On May 10, 2004, the Respondent submitted information regarding the country-of-origin of U&A France's merchandise. On July 1, 2004, the Petitioners responded to U&A France's submission. On July 19, 2004, U&A France submitted comments on the Petitioners' July 1 submission. These comments are discussed in the section titled "Country of Origin," *infra*.

On February 26, 2004, the Department extended the time limit for the preliminary results of the antidumping duty administrative review. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review 2002–2003: Stainless Steel Sheet and Strip in Coils from France*, 69 FR 8936 (February 26, 2004).

information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

Period of Review

The period of review (POR) is July 1, 2002, through June 30, 2003.

Scope of the Antidumping Duty Order

The products covered by this antidumping duty order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and CBP purposes, the Department's written description of the merchandise under review is dispositive.

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

Excluded from the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[7]

Successorship

Ugine S.A., an entity involved in the production and sale of subject merchandise in the United States, changed its name early in this POR to Ugine & ALZ France S.A. We conducted

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

a successorship review during the prior POR (in order to issue assessment instructions) and concluded that U&A France is the successor to Ugine for purposes of applying the antidumping duty law. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47051, 47052 (August 7, 2003); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 68 FR 69379 (December 12, 2003).

Country of Origin

U&A France urges the Department to exclude certain U.S. and home market sales made during the POR because these sales are outside the scope of this order. The Respondent argues that the Department should not include sales of merchandise that are hot-rolled in Belgium and then annealed and pickled in France, but which are not cold-rolled in France (HRAP), because this merchandise is of Belgian origin and not within the scope of the order. The Respondent explains that it produces stainless steel slab in France. The stainless steel slabs are then transported to Belgium where they are hot rolled pursuant to a "toll processing arrangement." The Respondent contends that the hot-rolling in Belgium is substantial transformation which changes the country of origin for the subject merchandise from France to Belgium. The Respondent notes that the Department has previously determined that hot-rolling stainless steel slabs constituted substantial transformation which changed the country of origin. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the U.K.* 64 FR 30688 (June 9, 1999) (*SSSS U.K.*). In *SSSS U.K.*, the Department determined that British stainless steel slabs which were hot-rolled in Sweden and subsequently returned to the United Kingdom for finishing were outside the scope of the investigation because the hot-rolling process constituted substantial transformation.

The Respondent also contends that the tolling arrangement between U&A France and the Belgian hot-roller has no bearing on the country of origin of the subject merchandise. The Respondent asserts that country of origin is not determined by reference to the ownership of the material. The Respondent notes that in *SSSS U.K.*, the Department did not consider the tolling arrangement between the U.K. and Swedish companies in arriving at its country-of-origin decision, nor did it in the context of a scope ruling. *See Final Scope Ruling on Antidumping Order on Polyvinyl Alcohol from Taiwan*, (December 19, 1996) (*Polyvinyl Alcohol Scope Ruling*). The Respondent argues that in *Polyvinyl Alcohol Scope Ruling*, the Department did not consider the tolling relationship in making its determination that the merchandise had been substantially transformed.

The Petitioners counter that the Department should include the HRAP merchandise within the scope of this order because the merchandise is of French origin. The Petitioners say that the Department is not required to dissect each stage of production to determine substantial transformation. The Petitioners argue that the Act gives the Department discretion to consider the totality of circumstances surrounding the production of the merchandise to determine country-of-origin issues. The Petitioners contend that the Department has the discretion to perform the substantial transformation test in a manner that compares how much of the production process of the subject merchandise occurred in France and how much occurred at the affiliated producer in Belgium. The Petitioners argue that the overall value of the finished SSSS exported from France is attributable to activity in France and controlled by the French producer.

The Petitioners argue that the Department should consider the following seven factors under its totality of the circumstances review to determine the country of origin of the HRAP merchandise: (1) U&A France maintains ownership and control of the product at all times; (2) U&A France purchases only a hot-rolling service from the Belgium affiliate and the transfer of funds to pay for this service is an intra-company transfer within the Arcelor Group; (3) U&A France and the Belgian affiliate are collapsible entities under the Department's regulations and can be treated as a single unit of production for the purpose of establishing the locus of production; (4) the hot-rolled product is an intermediate product that has no commercial purpose except to become finished hot- or cold-rolled SSSS; (5) the SSSS becomes subject merchandise only after the annealing and pickling occurs in France; (6) the hot-rolling in Belgium contributes only minimally to the total cost of production of the finished SSSS product; and (7) the final product is sold by U&A France to French affiliates. The Petitioners argue that these seven factors considered as a whole are sufficient to enable the Department to find that the HRAP merchandise is subject merchandise.

The Petitioners also argue that the *SSSS U.K.* case on which the Respondent relies is not dispositive of this case because, in the *SSSS U.K.* case, the SSSS slab was sold to the Swedish hot-roller. According to the Petitioners, this fact distinguishes the *SSSS U.K.* case from the present case, because in the former, the Respondent did not maintain control of the merchandise as U&A France does is this case.

Next, the Petitioners contend that the Department's 1994 policy memorandum concerning tolling methodology and country of origin does not support the Respondent's arguments regarding the HRAP merchandise. *See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, Through Paul L. Joffe, Deputy Assistant Secretary for Import Administration, To Susan G. Esserman, Assistant Secretary for Import Administration, Discussion Memorandum: A Proposed Alternative to Current Tolling Methodology in the Current Antidumping (AD) Review of Carbon Steel Flat Products*, (December 12, 1994) (*Tolling Memorandum*). The Petitioners say that the *Tolling Memorandum* was focused primarily on respondent selection and the selection of the correct seller's price, and not on determining what constitutes substantial transformation in the context of tolling. Accordingly, the Petitioners contend that the *Tolling Memorandum* does not prevent the Department from making tolling or other factors relevant considerations in whether a product is substantially transformed in the tolling country.

For purposes of these preliminary results, we have considered the record evidence and arguments submitted by the Petitioners and the Respondent, addressing the treatment of U&A France's HRAP merchandise. As summarized above, the Petitioners and the Respondent have commented on how the Department should examine the HRAP material in light of the scope of the order, the Department's tolling regulation, and substantial transformation. Considering the specific facts surrounding this case, we preliminarily find that Department should classify the HRAP merchandise as Belgian merchandise, outside the scope of the order in this case. Therefore, for purposes of the preliminary results, we have excluded sales of the HRAP merchandise from our analysis. However, we will continue to analyze the record evidence and arguments raised by the parties for purposes of the final results.

Affiliation of Parties

Arcelor S.A. (Arcelor) owns 98.97 percent of Usinor S.A. (Usinor). U&A France, in turn, is a wholly owned subsidiary of Usinor. Additionally, Arcelor owns 99.43 percent of Arbed S.A. (Arbed), and 95.03 percent of Aceralia Corporación Siderúrgica S.A. (Aceralia). Imphy Ugine Precision (IUP), which re-rolls merchandise purchased from U&A France, is also a subsidiary (wholly owned) of Usinor.[8] *See* Section A Response of Ugine & ALZ France S.A., dated October 14, 2003, at 17 (*Section A Response*).

U&A France and IUP made sales through two affiliated U.S. companies, Arcelor Stainless USA, Inc. (Arcelor Stainless USA) and Rahns Specialty Metals, Inc. (Rahns), respectively. Arcelor Stainless USA and Rahns made sales to an affiliate, Hague Steel Corporation (Hague), and also to unaffiliated customers. Hague then resold subject merchandise to unaffiliated customers both with and without further processing. Arcelor Stainless USA and Hague are wholly owned by Ugine Gueugnon, LLC, which in turn is wholly owned by Usinor USA Holding, LLC. Usinor USA Holding, LLC is wholly owned by J&L Specialty Steel, LLC, which is wholly owned by Arcelor USA Holding. Arcelor USA Holding is owned by Usinor, and several other companies, which are all wholly owned by Arcelor. *Id.*

We note that these facts constitute only minor changes to the ownership structure of these companies in this POR—most of the facts are virtually identical to those of the last review. As a result, the Department preliminarily determines that there is no reason to revisit our affiliation determinations from the previous review. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049 47051–52 (August 7, 2003) (*French SSSS 3rd Preliminary*).

Normal Value Comparisons

To determine whether U&A France's sales of subject merchandise to the United States were made at less than fair value, we compared the constructed export price (CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, *infra*. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual CEP transactions.

Transactions Reviewed

A. Home Market Viability

In accordance with section 773(a)(1) of the Act, to determine whether there were sufficient sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared U&A France's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because U&A France's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

B. Arm's-Length Test

U&A France reported that it made sales in the home market to affiliated end users and resellers during the POR. Sales to affiliated customers in the home market not made at arm's-length were excluded from our analysis (with the exception of one company, PUM, discussed *infra*). To test whether these sales were made at arm's-length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where identical merchandise was not sold to unaffiliated customers, we based the comparisons on sales of the most similar merchandise. Where prices to the affiliated party were on average between 98 and 102 percent of the price to the unrelated party, we determined that sales made to the related party were at arm's-length. *See* 19 CFR 351.403(c); *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). In our home market NV calculation, we have included U&A France's sales to certain of its affiliated customers because these entities passed the Department's arm's-length test criteria. Conversely, certain other affiliated customers did not pass the arm's-length test, and therefore sales to these affiliates have been excluded from our home market NV calculation.

For the two resellers not passing the arm's-length test, U&A France did not provide downstream sales information. For one of these two resellers ("Bernier"), the Department eliminated the sales from consideration because U&A France had satisfactorily explained that they were unable to obtain the downstream information. Specifically, U&A France explained that Bernier had been sold to a competitor during the POR, and that it was no longer in a position to compel Bernier to cooperate. *See* Supplemental Questionnaire Response of Ugine & ALZ France S.A., dated February 10, 2004, at 3 (*Feb. 10th Supplemental*). For the second reseller ("PUM"), however, the Department preliminarily determines that it is appropriate to apply adverse facts available for the missing downstream sales information.

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Consistent with sections 776(a)(2)(A) and (B) of the Act, we preliminary find that the use of facts available is warranted for PUM's downstream sales information. In the September 8, 2003 Section A questionnaire, the Department requested that U&A France report downstream sales for all affiliated resellers. On March 25, 2004, the Department sent U&A France a letter again requesting the downstream sales for all three affiliated resellers. On April 21, 2004, U&A France submitted a response to that letter, reiterating the arguments in its *Section A Response*, and in the *Feb. 10th Supplemental*, that resales by these three affiliated customers need not be reported. In its response, U&A France argued that one reseller had passed the arm's-length test, that one, Bernier, was no longer under its control, and that sales by PUM were insignificant and would not be used as matches for U.S. sales. U&A France also claimed that it would be difficult to collect all of the information requested by the Department. It did not provide any of the requested downstream sales information in the database provided with that submission, nor did it include that information in the final revised home market database it submitted on May 19, 2004.

To date, U&A France has not provided the downstream sales by any affiliated reseller. However, as discussed above, PUM is the only remaining reseller for which downstream sales should have

[8] For the purposes of this review, we consider IUP and U&A France to be one respondent and have collapsed their responses.

been reported. Therefore, consistent with sections 776(a)(2)(A) and (B) of the Act, because U&A France withheld information that had been requested by the Department and failed to provide such information in a timely manner, the Department is applying facts otherwise available. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. U&A France explicitly refused to provide downstream information for PUM, claiming that to do so would be overly burdensome given the insignificant volume of this reseller's sales compared to the aggregate home market sales volume, and that the product sold by this reseller would not be matched to products sold in the United States. *See Feb. 10th Supplemental,* at 4, and Supplemental Questionnaire Response of Ugine & ALZ France S.A., dated April 21, 2004, at 1–5 (*April 21st Supplemental*). Because U&A France explicitly refused to provide the requested downstream sales by PUM, the Department preliminarily determines that, in accordance with section 776(b) of the Act, the application of partial adverse facts available is appropriate. This situation is different than that of Bernier, U&A France's other reseller, that failed the arm's-length test. For Bernier, U&A France no longer had the control necessary to compel cooperation. For PUM, however, U&A France did not claim that its control over PUM was anything less than complete, or that it was otherwise unable to obtain the requested downstream sales information. U&A France chose not to provide the information simply because it could not see any reason for doing so that would justify the effort.

As adverse facts available, we will use the higher of the price charged to PUM (the "upstream" price) or the price charged for the most similar product purchased in the home market by an unaffiliated customer.[9] In selecting this information as adverse facts available, we took into consideration the small volume of the sales involved.

C. Date of Sale

As stated at 19 CFR 351.401(i), the Department normally will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. For U.S. sales, U&A France reported either invoice date, date of entry, or shipment date as the date of sale, depending on the distribution channel. The Department preliminarily finds that invoice date is the correct date of sale for U.S. sales.

For home market sales, U&A France reported invoice date as the date of sale, except for one distribution channel with "sales for which the invoice was issued after shipment," for which it reported shipment date as the date of sale. It also explained what terms of sale are established after shipment for these sales. These terms, established after shipment, have some effect on the material terms of sale, namely quantity. In addition, according to U&A France, sales revenue is not recognized until the invoices are issued for these sales. Moreover, sales through this channel constitute a clear minority of home market sales, and the Department's preference is to use only one sales date per market. Thus, we preliminarily determine that invoice date is the correct date of sale for all home market sales.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all SSSS products covered by the "Scope of the Antidumping Order" section of this notice, *supra*, and sold in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of SSSS products. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) hot/cold rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Normal Value

After testing home market viability and whether home market sales were at prices below the cost of production, we calculated NV as noted in the "Price-to-Constructed Value (CV) Comparison" and "Price-to-Price Comparisons" sections of this notice.

Cost of Production Analysis

Because we disregarded sales below the cost of production in the most recently completed segments of this proceeding on SSSS from France, we have reasonable grounds to believe or suspect that sales by U&A France in its home market were made at prices below the cost of production (COP), pursuant to section 773(b)(1) of the Act. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France,* 68 FR 69379 (December 12, 2003). Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by U&A France as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of U&A France's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses (SG&A), including interest expenses, and packing costs. We relied on the COP data submitted by U&A France in its original and supplemental cost questionnaire responses.

B. Test of Home Market Prices

We compared the weighted-average COP for U&A France to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

[9] In past reviews of this order, we have used only the price charged for the most similar product purchased in the home market by an unaffiliated customer. *See, e.g., French SSSS 3rd Preliminary,* 68 FR at 47055. However, the arm's-length test has changed since the initiation of the last review. The Department now rejects sales to affiliates if the average price is lower than 98 percent or higher than 102 percent of the average price to unaffiliated customers for the same products. Thus, we must now take into consideration the fact that the price paid for the most similar product by an unaffiliated customer might be higher or lower than the price paid by the affiliate. *See* 19 CFR 351.403(c); *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002).

C. Results of the COP Test

Pursuant to section 773(b)(2) of the Act, where less than 20 percent of U&A France's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of U&A France's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of U&A France's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by U&A France in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Export Price

In accordance with section 772(a) of the Act, export price (EP) is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, U&A France classified all of its reported sales of SSSS as CEP sales. During the review period U&A France made sales to the United States through its three U.S. based affiliates, Arcelor Stainless USA, Rahn, and Hague, which then resold the merchandise to unaffiliated customers. Therefore, because U&A France's U.S. sales were made by Arcelor Stainless USA, Rahn, and Hague after the subject merchandise was imported into the United States, it is appropriate to classify these sales as CEP sales.

We calculated the CEP in accordance with section 772(b) of the Act. We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight from plant to distribution warehouse, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse/plant to the unaffiliated customer, U.S. warehouse expenses, other U.S. transportation expense, wharfage expenses, and customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, credit, warranty expenses, commissions and other indirect selling expenses.

For products that were further manufactured by Hague after importation, we adjusted for all costs of further manufacturing in the United States, in accordance with section 772(d)(2) of the Act. In calculating the cost of further manufacturing for Hague, we relied upon the further manufacturing information provided by U&A France.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2), in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market. We also adjusted the starting price for billing adjustments, discounts, rebates, and freight revenue.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a home market match of identical or similar merchandise that is not disregarded due to the cost test. Where appropriate, we make adjustments to CV in accordance with section 773(a)(8) of the Act. We deduct from CV the weighted-average home market direct selling expenses. For these preliminary results, we did not have to rely on CV for NV.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to unaffiliated home market customers or prices to affiliated customers that were determined to be at arm's-length. Where appropriate, we deducted discounts, rebates, credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for billing adjustments, freight revenue, and direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with sections 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (COM) of the U.S. product, we based NV on CV.

For reasons discussed in the "Level of Trade" section below, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses (less any offset of U.S. commissions) from NV for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV using sales in the comparison market at the same level of trade (LOT) as the CEP sales. However, if the selected comparison market sales are at a different LOT than the CEP sales, and a consistent pattern of price differences is manifested between the sales on which NV is based and other home market

sales at the same LOT as the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP LOT, and there is no basis for determining a consistent pattern of price differences, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997). To determine whether NV sales are at a different LOT than CEP sales, we examine selling functions between the producer and the unaffiliated or affiliated customer (if the arm's-length test is passed) for home market sales, and between the producer and the affiliated customer for CEP sales.

In reviewing the selling functions reported by U&A France, we examined all types of selling functions reported in the questionnaire responses. Based on a comparison of such selling functions performed in the home market distribution channels, we preliminarily determine that U&A France sold merchandise at one LOT in the home market during the POR.

U&A France only reported CEP sales in the U.S. market. Because all of U&A France's CEP sales in the U.S. market were made through Arcelor Stainless USA, Rahn, and Hague, and the selling functions performed in these channels were similar, we preliminarily determine that there was one LOT in the U.S. market. For these CEP sales, fewer and different selling functions were performed for CEP sales than for sales at the home market LOT. For example, selling functions included in the home market LOT, but not in the CEP LOT, include some functions of strategic planning and marketing, all customer sales and contact, some functions of production planning and order evaluation, some functions of warranty claim analysis, all technical services, all sales-related administrative support, and arranging transportation to the final customer. *See Section A Response,* at Appendix 8.A. In other words, as explained in U&A France's *Section A Response,* U&A France performed very few selling activities for the U.S. sales because most selling functions were performed by the U.S. sales affiliates (*e.g.*, Arcelor Stainless USA, Rahn, and Hague) and associated expenses were reported in one of the U.S. indirect selling expenses variables. Accordingly, we found that sales at the home market LOT were at a more advanced stage of distribution compared to the CEP sales.

However, because the available data does not provide a basis for determining a LOT adjustment, we adjusted NV under section 773(a)(7)(B) of the Act (the CEP offset provision). We note that in all prior administrative reviews of this order, where similar situations existed, we also granted a CEP offset. *See, e.g., Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France,* 68 FR 4171 (January 28, 2003); and, *French SSSS 3rd Preliminary,* 68 FR at 47054–55. *See also Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 32501, 32506–07 (June 10, 2004).

Currency Conversion

For purposes of the preliminary results, in accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1996); *Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434 (March 6, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Duty Absorption

On September 10, 2003, the Petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review was initiated four years after the publication of the order, and affiliated parties acted as importer of record for some or all of U&A France's U.S. sales, we must make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On October 20, 2003, the Department requested evidence from U&A France that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. We established a due date of November 10, 2003. We received no response. On November 19, 2003, the Department sent U&A France a second letter reminding them of the earlier request and asking that the requested information be submitted by November 25, 2003. Again we received no response. In both letters, we advised U&A France that a failure to respond might result in the application of facts available.

In determining whether the antidumping duties have been absorbed by the respondent during the POR on sales for which they or their affiliates were importer of record, we presume that the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an agreement between the respondent/importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. In this case, however, U&A France did not respond to the Department's two requests for information. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Therefore, we preliminarily find that antidumping duties have been absorbed by U&A France during the POR on those sales at less than fair value for which its affiliates were the importers of record. *See, e.g., Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 10659 (March 8, 2004).

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted-average dumping margin exists:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM FRANCE

Producer/manufacturer/exporter	Weighted-average margin (percent)
U&A France	11.99

Pursuant to 19 CFR 351.224, the Department will disclose to any party to the proceeding, within five days of publication of this notice, the calculations performed. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will normally be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on a computer diskette. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Assessment

Upon issuance of the final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to CBP within fifteen days of publication of the final results of review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. If the preliminary results are adopted in the final results of review, this rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Cash Deposits

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for U&A France will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all others" rate established in the LTFV investigation, which was 9.38 percent. *See Antidumping Duty Order*, 64 FR at 40565.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under regulation 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: July 29, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18034 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization (collectively, petitioners), and respondent, ThyssenKrupp Nirosta GmbH, ThyssenKrupp VDM GmbH, ThyssenKrupp Nirosta North America, Inc., and ThyssenKrupp VDM USA, Inc. (collectively, TKN), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4) from Germany. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) July 1, 2002, through June 30, 2003.

We preliminarily determine that TKN made sales at less than fair value during the POR. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes) and (3) a table of authorities.

DATES: *Effective Date:* August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James at (202) 482–1121 or (202) 482–0649, respectively, Antidumping and Countervailing Duty Enforcement Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on S4 from Germany on July 27, 1999. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 40557 (July 27, 1999) (Antidumping Duty Order). The Department published the *Notice of Opportunity to Request Administrative Review* of S4 from Germany for the period July 1, 2002, through June 30, 2003, on July 2, 2003 (67 FR 44172).

On July 24 and 29, 2003, respectively, TKN and petitioners requested an

administrative review of TKN's sales for the period July 1, 2002, through June 30, 2003. On August 22, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003).

On September 12, 2003, the Department issued an antidumping duty questionnaire to TKN. TKN submitted its response to section A of the questionnaire on October 17, 2003, and its response to sections B through D of the questionnaire on November 24, 2003.[1] On March 23, 2004, the Department issued a supplemental questionnaire for sections A, B, and C, to which TKN responded on April 20 and 26, 2004. On May 05, 2004, the Department issued a supplemental questionnaire for section D. TKN responded to this supplemental questionnaire on May 19, 2004. Finally, on July 23, 2004, the Department issued a third supplemental questionnaire, for section B, to which TKN responded on July 27, 2004.

Because it was not practicable to complete this review within the normal time frame, on March 10, 2004, we published in the **Federal Register** our notice of the extension of time limits for this review. *See Stainless Steel Sheet and Strips in Coils from Germany; Antidumping Duty Administrative Review; Extension of Time Limit for Preliminary Results*, 69 FR 11386 (March 10, 2004). This extension established the deadline for these preliminary results as July 30, 2004.

Scope of the Review

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[7]

Duty Absorption

On September 22, 2003, petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondent. Section 751(a)(4) of the Tariff Act provides for the Department, if requested, to determine, during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because TKN sold subject merchandise to unaffiliated customers in the United States through an importer that is affiliated (*i.e.*, TKNNA, TKSSNA, and TKVDM USA), and because this review was initiated four years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Tariff Act.

In its July 12, 2004, supplemental questionnaire, the Department requested evidence from the respondent to demonstrate that unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries during this POR. On July 14, 2004, TKN stated it "does not believe that there is any basis for concluding that {respondents} absorbed antidumping duties in this review or will do so after they are assessed as a result of this review." In determining whether antidumping duties have been absorbed by the respondent during the POR, we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Despite TKN's claim, it provided no evidence on the record showing that unaffiliated purchasers will pay the full duty ultimately assessed on the subject merchandise. Therefore, we preliminarily find that antidumping duties have been absorbed by TKN on all U.S. sales made through its affiliated importers.

Verification

As provided in section 782(i) of the Tariff Act, the Department conducted a home market sales verification at TKN's headquarters in Krefeld, Germany and at its affiliate, Nirosta Service Center (NSC), in Wilnsdorf-Anzhausen, Germany. We used standard verification procedures, including on-site inspection of the facility, examination of relevant records, and selection of original documents containing relevant information. The sales verification report will be released after the preliminary results.

Fair Value Comparisons

To determine whether sales of S4 in the United States were made at less than fair value, we compared USP to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted-average NVs and compared these to individual U.S. transactions.

Constructed Export Price (CEP)

We calculated CEP in accordance with subsection 772(b) of the Tariff Act, because sales to the first unaffiliated

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

purchaser took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price or billing errors, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland freight, insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses, commissions and other direct selling expenses), inventory carrying costs, and other indirect selling expenses. We offset credit expenses by the amount of interest revenue on sales. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

For those sales in which material was sent to an unaffiliated U.S. processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by TKN.

Home Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Tariff Act. As TKN's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. If sales were not made at arm's-length, then the Department used the sale from the affiliated party to the first unaffiliated party. *See* 19 CFR 351.102. To test whether these sales to affiliates were made at arm's length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were between 98 and 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine whether these sales were made at arm's length prices and, therefore, excluded them from our analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509, 59512 (November 4, 1998). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production (COP) Analysis

The Department disregarded certain sales made by TKN in the preceding administrative review because these sales were below cost. *See Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review*, 69 FR 6262, (February 10, 2004); *see also Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 47039, 47041—42 (August 7, 2003). Thus, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act, there are reasonable grounds to believe or suspect that sales of S4 in the home market were made at prices below their COP in the current review period. Accordingly, pursuant to section 773(b) of the Tariff Act, we initiated a cost investigation to determine whether sales made during the POR were at prices below their respective COP.

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), interest expenses, and home market packing costs. We relied on the COP data submitted by TKN, except for the two changes noted below.

In accordance with section 773(f)(2) of the Tariff Act, where TKN's reported transfer prices for purchases of nickel from an affiliated party were not at arm's length, we increased these prices to reflect the prevailing market prices. *See* TKN's Preliminary Results Analysis Memorandum, July 29, 2004. For both TKN and VDM, we revised the interest expense ratio by recalculating the short-term interest income offset and including the net miscellaneous financial expense. *See id.*

In accordance with section 773(b)(1) of the Tariff Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of TKN's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of TKN's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) In substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Tariff Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Tariff Act. We did not make use of constructed value, as all U.S. sales were matched to home market sales.

Normal Value

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments for interest revenue, discounts, and rebates where appropriate. We made deductions, where appropriate, for foreign inland freight, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, when comparing sales of similar merchandise, we made

adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* "Level of Trade and CEP Offset" section below. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Tariff Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731, 61733 (November 19, 1997).

In implementing these principles in this review, we asked TKN to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. TKN identified four channels of distribution in the home market: (1) Mill direct sales, (2) mill inventory sales, (3) service center inventory sales, and (4) service center processed sales. For all channels, TKN performs similar selling functions such as negotiating prices with customers, setting similar credit terms, arranging freight to the customer, and conducting market research and sales calls. The remaining selling activities did not differ significantly by channel of distribution. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one level of trade exists for TKN's home market sales.

For the U.S. market, TKN reported three channels of distribution: (1) Back-to-back CEP sales made through ThyssenKrupp Nirosta North America, Inc. (TKNNA) or ThyssenKrupp Specialty Steels NA, Inc. (TKSSNA); (2) consignment CEP sales made through TKNNA or TKSSNA; and (3) inventory sales from TKNNA and TKSSNA. All U.S. sales were CEP transactions and TKN performed the same selling functions in each instance. Therefore, the U.S. market has one LOT.

When we compared CEP sales (after deductions made pursuant to section 772(d) of the Tariff Act) to home market sales, we determined that for CEP sales TKN performed fewer customer sales contacts, technical services, delivery services, and warranty services. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. In the home market, TKN provides marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market (*e.g.*, technical advice, credit and collection, *etc.*).

Based on our analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to HM sales, we examined whether a LOT adjustment may be appropriate. In this case TKN sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of TKN's sales of other similar products, and there is no other record evidence upon which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in Germany for TKN is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by TKN. Where there were commissions in the U.S. market but not the home market, we calculated the CEP offset as the lesser of either the U.S. commissions plus the U.S. indirect selling expenses or the home market indirect selling expenses. Where there were commissions in both the U.S. and home markets, we calculated the CEP offset as the lesser of either the home market indirect selling expenses or the U.S. indirect selling expense plus the difference between the U.S. and home market commissions. Where there were commissions in the home market but not the U.S. market, we calculated the CEP offset as the less of either the U.S. indirect selling expenses or the amount that the home market selling expenses exceed the home market commissions. We performed these calculations in accordance with 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Weighted average margin (percent)
TKN	9.95

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30

days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. Parties who submit an argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties for each importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department will issue appropriate appraisement instructions directly to Customs within fifteen days of publication of the final results of review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for TKN will be the rates established in the final results of review;

(2) If the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate of 13.48 percent from the LTFV investigation (*see Notice of Amended Final Determination of Antidumping Duty Investigation: Stainless Steel Sheet and Strip in Coils from Germany*, 67 FR 15178 (March 29, 2002)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 29, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18038 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from respondent ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) and petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico (A–201–822). This administrative review covers imports of subject merchandise from Mexinox S.A. during the period July 1, 2002 to June 30, 2003.

We preliminarily determine that sales of S4 in coils from Mexico have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Enforcement Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order* on stainless steel sheet and strip in coils from Mexico (64 FR 40560). On July 1, 2002, the Department published the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, of, *inter alia*, stainless steel sheet and strip in coils from Mexico for the period July 1, 2002 through June 30, 2003 (68 FR 39511).

In accordance with 19 CFR 351.213(b)(1), Mexinox and petitioners requested that we conduct an administrative review. On August 22, 2003, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2002, through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750 (August 22, 2003).

On September 15, 2003, the Department issued an antidumping duty questionnaire to Mexinox. Mexinox submitted its response to section A of the questionnaire on October 14, 2003, and its response to sections B through E of the questionnaire on November 20, 2003.[2] On March 1, 2004, the

[1] Petitioners are Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Organization, Inc. and the United Steelworkers of America, AFL–CIO/CLC.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise

Continued

Department issued a supplemental questionnaire for sections A, B, and C, to which Mexinox responded on March 30, 2004. On March 29, 2004, the Department issued a supplemental questionnaire for section D, as well as for sections C and E pertaining to an affiliated U.S. reseller, Ken-Mac Metals, Inc. (Ken-Mac). Mexinox responded to this supplemental questionnaire on April 27, 2004. The Department issued a second supplemental questionnaire for sections A through D on June 17, 2004; Mexinox submitted its response on July 6, 2004. Finally, on July 13, 2004, the Department issued a third supplemental questionnaire for sections A through E, to which Mexinox responded on July 16, 2004.

Because it was not practicable to complete this review within the normal time frame, on February 12, 2004, we published in the **Federal Register** our notice of the extension of time limits for this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Antidumping Duty Administrative Review; Extension of Time Limit*, 69 FR 6941 (February 12, 2004). This extension established the deadline for these preliminary results as July 30, 2004.

Period of Review

The period of review (POR) is July 1, 2002 through June 30, 2003.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less; containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulfide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently

under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[7]

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Duty Absorption

On September 22, 2003, petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondent. Section 751(a)(4) of the Tariff Act of 1930, as amended (the Act) provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because Mexinox S.A. sold subject merchandise to unaffiliated customers in the United States through an importer that is affiliated (*i.e.*, Mexinox USA), and because this review was initiated four years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

In its March 1, 2004 supplemental questionnaire, the Department requested evidence from the respondent to demonstrate that unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries during this POR. In its March 30, 2004 supplemental questionnaire response at page 2, Mexinox stated it "does not believe that there is any basis for concluding that its affiliate Mexinox USA has 'absorbed' antidumping duties in this review or will do so after they are assessed as a result of this review," but requested that the Department provide clarification regarding the types of documents or data that could be submitted as evidence that unaffiliated purchasers ultimately will pay the antidumping duties assessed on entries during the POR. On July 16, 2004, we issued a clarification letter to Mexinox and requested that Mexinox provide any such evidence by July 23, 2004. None was provided.

In determining whether antidumping duties have been absorbed by the respondent during the POR we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Given that Mexinox did not provide any evidence on the record showing that unaffiliated purchasers will pay the full duty ultimately assessed on the subject merchandise, and despite its claim that duty absorption did not occur, we preliminarily find that antidumping duties have been absorbed by Mexinox S.A. on U.S. sales made through its affiliated importer, Mexinox USA.

Sales Made Through Affiliated Resellers

A. U.S. Market

Mexinox USA, a wholly-owned subsidiary of Mexinox S.A., sold subject merchandise in the United States during the POR to unaffiliated customers. Mexinox USA also made sales of subject merchandise during the POR to an affiliated company, Ken-Mac, which in turn resold the subject merchandise to unaffiliated customers in the United States. See Mexinox's October 14, 2003 questionnaire response at A–11. Thus, in addition to Mexinox USA's sales to unaffiliated customers, we have included in our preliminary margin calculation resales of Mexinox subject merchandise made through Ken-Mac.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a wholly-owned subsidiary of Mexinox S.A., sells both the foreign like product and other merchandise in the home market. Mexinox reported that sales through

Mexinox Trading during the POR represented less than five percent of Mexinox's total sales of the foreign like product in the home market. *See, e.g.*, Mexinox's October 14, 2003 questionnaire response at A–4 and its July 6, 2004 supplemental questionnaire response at Attachment B–43. Because Mexinox Trading's sales of the foreign like product were less than five percent of home market sales of the foreign like product, in accordance with 19 CFR 351.403(d), we did not require Mexinox to report downstream sales by Mexinox Trading to the first unaffiliated customer. This treatment is consistent with that employed in past administrative reviews of S4 in coils from Mexico. *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004) (*S4 in Coils from Mexico 2001–2002 Final Results*).

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than fair value, we compared the CEP to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared individual CEPs to monthly weighted-average NVs.

Transactions Reviewed

For its home market and U.S. sales, Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. *See* 19 CFR 351.401(i). Mexinox stated the invoice date represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the date of shipment and invoicing, these terms were subject to change. *See, e.g.*, Mexinox's October 14, 2003 questionnaire response at A–39 and A–44. In our March 1, 2004 supplemental questionnaire, we requested that Mexinox provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of the sales order and date of invoice. In response, Mexinox provided analyses for its U.S. and home market sales showing how often changes in price and quantity occurred between order date and invoice date. *See* Mexinox's March 30, 2004 supplemental questionnaire response at Attachment A–22. Based on our analysis of the information submitted by Mexinox, we have preliminarily determined the date of invoice is the appropriate date of sale because record evidence indicates that in a number of instances the price and quantity changed between the date of the order acceptance and the date of invoice. Therefore, we find Mexinox's claim that price and quantity terms are subject to negotiation until the date of invoice is substantiated. Our use of invoice date as the date of sale is consistent with past administrative reviews of S4 in coils from Mexico. *See, e.g., S4 in Coils from Mexico 2001–2002 Final Results.*

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Mexinox S.A. covered by the description in the "Scope of the Review" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) cold/hot rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's September 15, 2003, questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (*i.e.*, the CEP offset provision).

In the Department's September 15, 2003 questionnaire, we asked Mexinox to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. Mexinox identified two channels of distribution in the home market: (1) Direct shipments (*i.e.*, products manufactured to order) and (2) sales through inventory. *See, e.g.*, Mexinox's October 14, 2003 questionnaire response at A–25. Within both channels of distribution, Mexinox S.A. made sales to both retailers and end users. For both channels of distribution, Mexinox S.A. performed similar selling functions such as pre-sale technical assistance, inventory maintenance, freight and delivery arrangements, and after-sales warranty services. *See, e.g.*, Mexinox's March 30, 2004 supplemental questionnaire response at Attachment A–21–A. Because channels of distribution do not qualify as separate LOTs when the selling functions performed are sufficiently similar, we determined one LOT exists for Mexinox's home market sales. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 78417 (December 24, 2002).

For the U.S. market, Mexinox reported one LOT, the CEP LOT. Sales made through this LOT consisted of merchandise produced to order that was sold directly to unaffiliated U.S. customers ("direct shipments"), sales made from the stock of finished goods held at the Mexican factory in San Luis Potosi to unaffiliated U.S. customers ("SLP stock sales"), and sales made through Mexinox USA's inventory. Sales made through this LOT also included CEP sales made through Mexinox USA's affiliated reseller, Ken-Mac. *See, e.g.*, Mexinox's October 14, 2003 questionnaire response at A–26 to A–27. When we compared CEP sales (after deductions made pursuant to section 772(d) of the Act) to home market sales, we determined there were fewer customer sales contacts, technical services, inventory maintenance, and warranty services performed for CEP sales. *See, e.g., id.* at A–35 to A–36 and Attachments A–4–B and A–4–C and

Mexinox's March 30, 2004 supplemental questionnaire response at Attachment A–21–A. In addition, the differences in selling functions performed for home market and CEP transactions indicate home market sales involved a more advanced stage of distribution than CEP sales. *See id.* In the home market, Mexinox S.A. provides marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by service centers in the U.S. market (*e.g.*, technical advice, credit and collection, *etc.*). *See id.*

Based on our analysis of the selling functions performed for the CEP LOT and the home market LOT, we determined the CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to home market sales, we examined whether a LOT adjustment may be appropriate. In this case, Mexinox sold at one LOT in the home market; thus, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of Mexinox's sales of other similar products, and there are no other respondents or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT of home market sales is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by Mexinox. We based the amount of the CEP offset on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for billing adjustments, discounts and rebates, and commissions, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate: foreign inland freight, foreign brokerage and handling, inland insurance, ocean freight,[8] U.S. customs duties, U.S. inland freight, U.S. brokerage, and U.S. warehousing expenses. As further directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit costs, warranty expenses, and another expense not subject to public disclosure), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act, and added duty drawback to the starting price in accordance with section 772(c)(1)(B) of the Act. For those sales in which the material was sent to an unaffiliated U.S. processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by Mexinox. In addition, the U.S. affiliated reseller Ken-Mac performed some further manufacturing of some of Mexinox's U.S. sales. For these sales, we deducted the cost of further processing in accordance with 772(d)(2) of the Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon the further manufacturing information provided by Mexinox.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See, e.g.*, Mexinox's April 27, 2004 supplemental questionnaire response at Attachment A–28 (quantity and value chart).

B. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). To test whether the sales to affiliates were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, discounts and rebates, movement charges, and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002). In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the most recently completed review of S4 in coils from Mexico (*see S4 in Coils from Mexico 2000–2001 Final Results*), we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Mexinox.

To calculate COP, in accordance with sections 773(f)(2) and (3) of the Act, we adjusted Mexinox's reported raw material costs (major input rule). *See* the Department's Preliminary Analysis Memorandum from Deborah Scott to the File dated July 30, 2004 (Preliminary Analysis Memorandum) for more information regarding this adjustment. We also recalculated Mexinox's general and administrative (G&A) and interest expenses as described in the Preliminary Analysis Memorandum. We added the revised material costs to the respondent's reported cost of fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We then computed weighted-average COPs during the POR, and compared the weighted-average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP. On a

[8] This expense was incurred on sales to Puerto Rico.

product-specific basis, we compared the COP to the home market prices net of billing adjustments, discounts and rebates, and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities; and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model (*i.e.*, CONNUM) were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Mexinox revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Mexinox's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. We made adjustments for billing adjustments, discounts, and interest revenue, where appropriate. We made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, difmer) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. As noted in the "Level of Trade" section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Facts Available

In accordance with section 776(a)(1) of the Act, for these preliminary results we find it necessary to use partial facts available in those instances where the respondent did not provide certain information necessary to conduct our analysis.

In our September 15, 2003 questionnaire at G–6, we requested that Mexinox provide sales and cost data for all affiliates involved with the production or sale of the merchandise under review during the POR in both the home and U.S. markets. In its October 14, 2003 questionnaire response at A–2, Mexinox indicated its affiliated reseller, Ken-Mac, sold subject merchandise in the United States during the POR. In its November 20, 2003 submission, Mexinox provided data related to Ken-Mac's resales of subject merchandise to unaffiliated customers in the United States. At pages 37–38 of its April 27, 2004 supplemental questionnaire response, Mexinox indicated Ken-Mac was unable to confirm the origin of some of the stainless steel material it sold during the POR. Therefore, Mexinox reported data on these particular resales through Ken-Mac in a separate database. *See id.* at Attachment KMC–13. Because of the unknown origin of certain of Ken-Mac's resales of subject merchandise, Mexinox has, in effect, not provided all the information necessary to complete our analysis.

Since Mexinox has not provided all of the information necessary to perform our analysis, we have preliminarily determined that, pursuant to section 776(a)(1) of the Act, it is appropriate to use the facts otherwise available in calculating a margin on Ken-Mac's "unattributable" sales. Section 776(a)(1) of the Act provides that the Department will, subject to section 782(d) of the Act, use the facts otherwise available in reaching a determination if "necessary information is not available on the record." Hence, for these preliminary results, we have calculated a margin on Ken-Mac's "unattributable" resales by applying the overall margin calculated on all other sales/resales of subject merchandise to the weighted-average price of Ken-Mac's "unattributable" sales. This methodology is consistent with that employed in past administrative reviews of S4 in coils from Mexico. *See, e.g.*, Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 68 FR 6889 (February 11, 2003), as amended, *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico,* 68 FR 13686 (March 20, 2003) (*S4 in Coils from Mexico 2000–2001 Final Results*). However, prior to applying the overall margin calculated on other sales/resales of subject merchandise to Ken-Mac's "unattributable" sales, we determined, based on the relative percentage (by volume) of subject stainless steel merchandise that Ken-Mac purchased during the POR from Mexinox and other vendors,[9] the quantity of each "unatttributable" transaction that could be allocated reasonably to subject stainless steel merchandise purchased

[9] Mexinox provided this information in its April 27, 2004 supplemental questionnaire response at Attachment KMC–14.

from Mexinox. We note that for these preliminary results we have not used an adverse inference, as provided under section 776(b) of the Act, to calculate a margin on Ken-Mac's "unattributable" sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2002 through June 30, 2003:

Manufacturer/exporter	Weighted average margin (percent)
ThyssenKrupp Mexinox S.A. de C.V	5.97

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting case briefs, rebuttal briefs, and written comments would provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for Mexinox will be the rate established in the final results of review;

(2) If the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review, or the LTFV investigation conducted by the Department, the cash deposit rate will be the "all others" rate from the investigation (30.85 percent). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 40560, 40562 (July 27, 1999).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 29, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18039 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–887]

Notice of Antidumping Duty Order: Tetrahydrofurfuryl Alcohol From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce ("the Department") is issuing an antidumping duty order on Tetrahydrofurfuryl Alcohol from The People's Republic of China.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207.

Scope of Order

The product covered by this order is tetrahydrofurfuryl alcohol ($C_5H_{10}O_2$) ("THFA"). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classifiable in the Harmonized Tariff Schedules of the United States ("HTSUS") under subheading 2932.13.00.00. Although the HTS subheadings are provided for convenience and for customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Background

In accordance with section 735(a) of the Act, the Department made its final determination that THFA from the People's Republic of China ("PRC") is being sold at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From The People's Republic of China*, 69 FR 34130 (June 18, 2004).

Antidumping Duty Order

On July 29, 2004, in accordance with section 735(d) of the Act, the International Trade Commission ("the Commission") notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of THFA from the PRC. These antidumping duties will be assessed on all unliquidated entries of THFA from the PRC entered, or withdrawn from the warehouse, for consumption on or after January 27, 2004, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From The People's Republic of China*, 69 FR 3887 (January 27, 2004).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of THFA, we extended the four-month period to no more than six months. *See Notice of Postponement of Final Determination of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol From The People's Republic of China*, 69 FR 12127 (March 15, 2004). In this investigation, the six-month period beginning on the date of the publication of the preliminary determination ends on July 27, 2004. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of THFA from the PRC entered, or withdrawn from warehouse, for consumption on or after July 27, 2004, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

On or after the date of publication of the Commission's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as listed below. The "PRC-wide" rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Qingdao Wenkem (F.T.Z.) Trading Co., Ltd	136.86
PRC-Wide	136.86

This notice constitutes the antidumping duty order with respect to THFA from the PRC pursuant to section 735(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 2, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18041 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: September 10, 2004.

Time: 9 a.m. to 3 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3407, Washington, DC 20230.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on September 10, 2004, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3407, Washington, DC 20230. The ETTAC will discuss environmental technologies trade policies and programs. Time will be permitted for public comment. The meeting is open to the public.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2006.

For further information contact Mr. Corey Wright, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI at (202) 482–5225.

Dated: July 29, 2004.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 04–17951 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072204D]

Proposed Information Collection; Comment Request; Tilefish Reporting in the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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 October 5, 2004.

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 and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149,(phone 305–361–4263).

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery quotas are established for species in the tilefish management unit within the Gulf of Mexico Reef Fish Fishery Management Plan (FMP) (see 50 CFR 622.42(a)(1)(iv)).

The existing methods of monitoring the tilefish quota established by the FMP are likely to be ineffective. The Southeast Fisheries Science Center intends to use the authority under section 50 CFR 622.5(c)(3)(ii) to require dealers to report purchases (landings) of species in the tilefish fishery on a monthly basis. This reporting methodology is the same as the procedures that have been established to monitor the deep-water and shallow-water grouper quotas also established under the Reef Fish FMP.

II. Method of Collection

The Southeast Fisheries Science Center will provide a reporting form to each dealer selected to report. The dealer must complete the reporting form by providing the name and permit number of the company and the amount purchased (landed) for the previous month for the individual species in tilefish management unit. This form must be faxed or sent as an e-mail attachment to the Southeast Fisheries Science Center, Miami, FL, within five business days of the end of each month until the quota is reached and the fishery is closed. For dealers that do not have a rapidfax machine or access to e-mail, pre-addressed, pre-paid envelopes will be provided.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations (seafood dealers and fishermen).

Estimated Number of Respondents: 85.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 3 hours.

Estimated Total Annual Cost to Public: $0.

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: July 20, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–18054 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072804B]

Taking and Importing of Marine Mammals

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

ACTION: Notice of affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) renewed the affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA). This affirmative finding renewal will allow yellowfin tuna harvested in the Eastern Tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction to continue to be imported into the United States. The affirmative finding renewal was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the Department of State.

DATES: Effective April 1, 2004, through March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213; Phone 562–980–4000; Fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the International Dolphin Conservation Program Act (IDCPA) (Public Law 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State. The finding will be reviewed annually to ensure that the nation continues to meet the requirements for an affirmative finding. The requirements must be met in order for the finding to remain valid for the following 12–month period (April 1 through March 31) or for such other period as the Assistant Administrator may determine.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. A nation may provide information regarding compliance with the IDCP directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the

required documentary evidence directly to the Assistant Administrator.

As a part of the annual review process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico or obtained from the IATTC and the Department of State and determined that Mexico has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, NMFS renewed the Government of Mexico's affirmative finding allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction.

The Government of Mexico must submit a new application in early 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and the subsequent 4 years.

Dated: July 30, 2004.

John Oliver,

Deputy Assistant Administrator for Operation, National Marine Fisheries Service.

[FR Doc. 04–18053 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080304A]

Draft NOAA Shrimp Issues and Options Paper Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The National Marine Fisheries Service (NOAA Fisheries) is hosting public meetings to present the results of an analysis of different options and alternatives that may help resolve current financial and market industry challenges. The analysis was developed at the request of the shrimp industry and other interested parties. The options will be presented in their entirety and the results from those that could be analyzed will be presented. Public comment on the analysis will be taken at the meetings. See **DATES** and **ADDRESSES** for specific dates, times and locations of the meetings.

DATES: The meetings held on Monday August 23–24, are scheduled to start at 11:30 a.m. on the 23rd and end at noon on the 24th. The meeting held on August 25th is scheduled to begin at 7 p.m. and end at 10 p.m. The meeting held on August 27th is scheduled to begin at 9:30 a.m. and end at 4 p.m. The meeting held on August 28th is scheduled to begin at 9:30 a.m. and end at 4 p.m. Another meeting will be scheduled for September in New Orleans, LA.

ADDRESSES: The meetings August 23–24 will be held at the Holiday Inn Houston Intercontinental Airport, 15222 John F. Kennedy Blvd. Houston, TX 77032; 281–449–2311; the meeting August 25th will be held at the Sheraton Suites Tampa Airport, 4400 West Cypress Street, Tampa, FL; 813–873–8675; the meeting August 27th will be held at the Embassy Suites Airport-Convention Center, 5055 International Boulevard, North Charleston, SC 29418; 843–747–1882; the meeting August 28th will be held at the New Bern Sheraton, 100 Middle Street, New Bern, NC 28560; 252–638–3585.

FOR FURTHER INFORMATION CONTACT: Gordon J. Helm, Deputy Director, Office of Constituent Services. Telephone (301) 713–2379.

SUPPLEMENTARY INFORMATION: The primary goal of the meeting is to present the analysis and collect public input on the DRAFT shrimp industry issues and options included in the paper. Copies of the DRAFT paper will be available at the meetings and will also be available online beginning 11 a.m. EST August 23, 2004, at: *www.nmfs.noaa.gov/mediacenter*. Those interested in obtaining a copy after the meetings may contact Dr. John Ward, Economist. Telephone (301) 713–2379.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. John Ward at (301) 713–2379 at least 5 days prior to the meeting date.

Dated: August 3, 2004.

Gordon J. Helm,

Deputy Director, Office of Constituent Services, National Marine Fisheries Service.

[FR Doc. 04–18052 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072904C]

Marine Mammals; File No. 1054–1731

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the University of Florida, Aquatic Animal Program, College of Veterinary Medicine, 2015 SW 16th Avenue, Gainesville, FL 32610 (Dr. Ruth Frances-Floyd, Principal Investigator), has been issued a permit to import and export marine mammal specimens for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 30, 2004, notice was published in the **Federal Register** (69 FR 25374) that a request for a scientific research permit to import and export marine mammal species under NMFS jurisdiction had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Holder is authorized to receive, import, and export marine mammal specimens for research on diseases in marine mammals. Infectious disease investigations include viral pathogens such as West Nile virus, St. Louis Encephalitis virus, herpes virus, and pox viruses. Other projects include

development of a marine mammal histology database and atlas, research on the effects of boat strikes on cetacean bone, and investigation into acute phase proteins in cetaceans. Cell lines may be developed from marine mammal tissues. The permit has been issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 3, 2004.

Jennifer Skidmore,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–18051 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

August 3, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning three petitions for determinations that certain woven, 100 percent cotton, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On July 30, 2004, the Chairman of CITA received three petitions from Sandler, Travis & Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petitions request that shirts, trousers, nightwear, robes, dressing gowns and woven underwear of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on these petitions, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by August 23, 2004, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On July 30, 2004, the Chairman of CITA received a petition on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated HTSUS subheadings, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Fabric 1	
Petitioner Style No:	4835
HTS Subheading:	5208.42.30.00
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	Of yarns of different colors; napped on both sides, sanforized
Fabric 2	
Petitioner Style No:	0443B
HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 17.3 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	Of yarns of different colors; napped on both sides, sanforized
Fabric 3	
Petitioner Style No:	4335
HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	20.1 warp ends per centimeter; 16.5 filling picks per centimeter; total: 36.6 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.3 metric
Finish:	Of yarns of different colors; napped on both sides, sanforized

The petitioner emphasizes that the fabrics must be napped on both sides, that the yarn sizes and thread count, and consequently, the weight of the fabrics must be exactly or nearly exactly as specified or the fabrics will not be suitable for their intended uses. The warp yarns must be ring spun in order to provide the additional tensile strength required to offset the degrading effects of heavy napping on both sides. The filling yarns must be open end spun to provide required loft and softness. The filling yarns must be spun from fibers that have been stock dyed prior to carding and the warp yarns must be

dyed prior to weaving in order to give the desired heather effect.

CITA is soliciting public comments regarding these requests, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than August 23, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this fabric can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–18112 Filed 8–4–04; 11:49 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Finding of No Significant Impact Air Force Memorial, Naval Annex Site Arlington, VA

ACTION: Notice.

On Tuesday, August 3, 2004 (69 FR 46523), the Department of Defense inadvertently published a duplication of the *Federal Register* notice that was published on April 3, 2003 68 FR 16264). This notice publishes the intended notice.

The Director, Defense Facilities Directorate finds that the project described in the Environmental Assessment, Air Force Memorial, Naval Annex Site, March 2003, is not a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact statement will be prepared. This decision is in accordance with the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S. Code 4321 *et seq.*), the implementing regulations of the Council on Environmental Quality (CEQ, 40 CFR 1500–1508), and DoD Instruction 4715.9, Environmental Planning and Analysis.

Congress authorized the proposed action to establish an Air Force Memorial on three acres of the Naval Annex Site to honor he men and women who served in the U.S. Air Force and its predecessors. The main element of the Memorial would be three curving vertical spires, from 200 to 270 feet high, that symbolize Air Force core values, people, and key mission ingredients. Complimentary elements include a parade ground, honor guard sculpture, contemplative outdoor areas, seating, walkways, and parking. The proposed action includes demolition of Wing 8 of the Naval Annex.

The Environmental Assessment identified project alternatives, affected environment, environmental consequences, and proposed mitigation measures. It examined potential impacts on socio-economic conditions, cultural and visual resources, transportation systems, physical and biological resources, utilities and infrastructure, and cumulative impact.

Public involvement included presentations and applications to relevant groups and agencies. The Department of Defense (DoD) Washington Headquarters Services (WHS) published a Notice of Availability of Environmental Assessment in local newspapers on March 31, 2003, and in the **Federal Register** on April 3, 2003. The document was made available by mail Web site, and library to interested or affected people and agencies. The 30-day comment period closed May 5, 2003. The Response to Comments on Environmental Assessment, June 2004, includes all comments received and how they were addressed. The comments and response address environmental issues and mitigation measures under the following topics: Height and lighting of memorial and site design; agency reviews; and natural resources.

The Environmental Assessment and Response to Comments on Environmental Assessment are available at *http://www.dtic.mil/ref/Safety/index.htm* or by contacting the WHS Defense Facilities Directorate (703–697–7241) or the Air Force Memorial Foundation (703–247–5859).

Dated: August 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–18058 Filed 8–4–04; 9:12 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for the Final Environmental Impact Statement for the Digital Multi-Purpose Range Complex at Fort Benning, GA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Record of Decision (ROD) for the Final Environmental Impact Statement (EIS) for the Digital Multi-Purpose Range Complex (DMPRC) at Fort Benning, GA. The ROD details the Army's decision with respect to the proposed action and alternatives considered in the EIS, and the rationale for the decision. Based on the EIS and other factors, the Army has decided to implement its preferred alternative. This decision allows the Army to proceed with the necessary actions to allow the construction, operation and maintenance of a DMPRC at Fort Benning. The decision also affirms the Army's commitment to implementing a series of mitigations and monitoring measures, as identified in the EIS, to offset potential adverse environmental impacts associated with the proposed action.

ADDRESSES: Interested parties desiring to review the ROD may obtain a copy by contacting Mr. Richard McDowell, Public Affairs Officer, U.S. Army Infantry Center, ATTN: ATZB–PO, Fort Benning, GA, 31905–5122 or by sending an electronic mail request to *mcdowellr@benning.army.mil.* The ROD may also be viewed on the Fort Benning Web site (*http://www-benning.army.mil/EMD/dmprcLegal&PublicNotices.htm*).

FOR FURTHER INFORMATION CONTACT: Mr. Richard McDowell at 706–545–2211.

SUPPLEMENTARY INFORMATION: In compliance with the National

Environmental Policy Act, the Army prepared an EIS for the construction, operation, and maintenance of the DMPRC. The EIS identified the relevant environmental and socioeconomic impacts of the proposed action and alternatives on the biological, physical, and cultural environment.

As a result of this decision, the Army will proceed with the necessary actions to begin to construct and operate the facilities described in the Preferred Alternative (Alternative III). Although the Environmentally Preferred Alternative (Alternative I–No Action) generally had few environmental impacts than the two action alternatives, it had significant adverse impacts from noise and did not meet the overall training needs of the installation. Noise was a major concern raised in public comments. The Army Preferred Alternative substantially reduces adverse noise impacts on the communities near Ft. Benning by moving the training range to a more interior portion of the installation. Alternative II would also meet the basic purpose and need for the DMPRC, but would have more adverse environmental effects that Alternative III. All practicable measures will be used to mitigate the impacts. The mitigation measures are listed in the ROD. The proposed project site is an approximately 1,800 acre area in the D13 area that would utilize an existing dudded impact area, K15. The DMPRC would contain 35 stationary infantry targets, 11 evasive moving armor targets, 55 stationary armor targets, two defense trenches with foxholes, 19 defilade positions (Abrams Tank and Bradley Fighting Vehicle hiding places), four tank trails, eight low-water crossings (four on Bonham Creek and four on Sally Beach). A helipad will also be constructed for use in emergency evacuations. The following support facilities would be constructed in an approximately 20-acre area to the southwest of the range and target firing area and just off of Hourglass Road: latrines; bivouac pads; a covered mess (dining area); vehicle holding and maintenance areas; a well house; water distribution and wastewater collection/treatment systems; a secondary power and data distribution system; a Control Building; and buildings for After Action Review; general instruction; operations and storage; central maintenance and for ammunition breakdown (with ammunition dock).

Michael Q. Frnka,

Director Public Works Division, Installation Management Agency, Southeast Region.

[FR Doc. 04–18000 Filed 8–5–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Draft Supplemental Environmental Impact Statement for the Wyoming Valley Levee Raising Project, Wilkes-Barre, PA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Baltimore District has prepared a Draft Supplemental Environmental Impact Statement (SEIS) for the design modifications and recreational enhancements to the Wyoming Valley Levee Raising Project at the Wilkes-Barre, Pennsylvania River Commons. The Draft SEIS investigates the potential environmental effects of an array of alternative plans based on the conceptual riverfront plan for Wilkes-Barre. The preferred alternative includes the addition of two portals through the levee, a river landing, fishing platform/dock, and an amphitheater and stage. We are making the Draft SEIS available to the public for a 45-day review and comment period.

DATES: Comments need to be received on or before September 20, 2004, to ensure consideration in final plan development. A public meeting on the recreational improvements to the Wyoming Valley Levee Draft SEIS will be held at Kings College Sheehy-Farmer Campus Center in Building #22, near the corner of West Union and North Main Streets in Wilkes-Barre, Pennsylvania on Wednesday, August 25, 2004 beginning at 7 p.m.

A map showing the location on the Kings Campus can be found at *http://www.kings.edu/nvtour/campusmap.pdf.*

ADDRESSES: Send written comments concerning this proposed project to U.S. Army Corps of Engineers, Baltimore District, Attn: Mr. William D. Abadie, CENAB–PL–P, P.O. Box 1715, Baltimore, MD 21203–1715. Submit electronic comments to *william.d.abadie@usace.army.mil.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Abadie, Environmental Team Leader, (410) 962–4713 or (800) 295–1610.

SUPPLEMENTARY INFORMATION: Federal flood control projects along the Susquehanna River have protected communities in the Wyoming Valley of northeastern Pennsylvania since the late 1930's. However, in June 1972, Tropical Storm Agnes struck, and the Susquehanna River overtopped the levee system in the Valley, causing severe damage in many communities. In response, in 1986 the U.S. Congress authorized raising the Wyoming Valley levee system and implementing other flood damage reduction measures. Construction of the levee raising started in the Spring of 1997 and continues.

In the urbanized area of the Wyoming Valley, including the City of Wilkes-Barre, the levee and floodwall system have created a physical, psychological and aesthetic barrier between the communities along the Susquehanna River. Through public workshops in 1999, a conceptual plan was developed for the City of Wilkes-Barre riverfront that would restore the connection between the city and the river. The plan consists of a riverfront park to be located on the riverside of the levee at downtown Wilkes-Barre, which would be accessible through two portals (*i.e.* gates) in the levee/floodwall system. The Luzerne County Flood Protection Authority, which is the non-Federal project partner for the Wyoming Valley Levee Raising Project, requested that the conceptual riverfront plan be incorporated into the project. This request initiated a general reevaluation report (GRR) and this Draft SEIS to investigate the potential environmental effects to alternative plans based on the conceptual riverfront plan.

The preferred plan for the riverfront park include two portals, a river landing, a fishing platform/dock, and an amphitheater and stage. In addition to these features, miscellaneous recreational amenities (*e.g.,* lights, seating areas with benches, trees/vegetation, educational kiosks, and trash receptacles) would be included. Also, the existing access road at the riverside of the levee would be paved.

A public meeting on the Draft SEIS will be held at Kings College (*see* **DATES**). The meeting will provide an opportunity for the public to present oral and/or written comments. All persons and organizations that have an interest in the recreational

improvements to the Wyoming Valley Levee as they affect Luzerne County and the environment are urged to attend the meeting and provide comments.

USACE has distributed copies of the Draft SEIS to appropriate members of Congress, State and local government officials, Federal agencies, and other interested parties. Copies are available for public review at the following locations:

(1) Osterhout Free Library, 71 South Franklin Street, Wilkes-Barre, PA 18701.

(2) Osterhout Free Library, South Branch, 2 Airy Street, Wilkes Barre, PA 18702.

(3) D. Leonard Corgan Library, King's College, 14 West Jackson Street, Wilkes-Barre, PA 18711.

You may view the Draft SEIS and related information on our Web page at *http://www.nab.usace.army.mil/publications/non-reg_pub.htm.*

After the public comment period ends on September 20, 2004, USACE will consider all comments received. The Draft SEIS will be revised as appropriate and a Final SEIS will be issued.

The Draft SEIS has been prepared in accordance with (1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and (3) USACE regulations implementing NEPA (ER–200–2–2).

William D. Abadie,

Environmental Team Leader.

[FR Doc. 04–17999 Filed 8–5–04; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Restoration of Airfield Clear Zones and Storm Water Drainage Systems at Naval Air Station (NAS) Key West, FL

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of bringing the Boca Chica Field into compliance with Navy and Federal Aviation Administration (FAA) Safety Regulations. Overgrowth of mangroves and other vegetation has negatively affected visibility and poses a strike hazard to aircraft landing and taking off at Boca Chica Field, thereby, adversely impacting airfield operations. Additionally, inadequate surface water drainage on the airfield has been identified as a significant safety hazard. NAS Key West's primary mission is to provide pilot training facilities and services as well as access to superior airspace and training ranges for tactical aviation squadrons. As such, NAS Key West serves as the Navy's premier East Coast pilot training facility for tactical aviation squadrons.

The EIS will evaluate the environmental effects associated with vegetation removal on airspace, safety, earth resources, land use, socioeconomic resources, infrastructure, cultural resources and biological resources; including endangered and sensitive species, specifically the Lower Keys Marsh Rabbit (LKMR) and mangroves. Methods to reduce or minimize impacts to these species and essential fish habitat provided by mangroves in the clear zones will also be addressed. The analysis will include an evaluation of the direct, indirect, and cumulative impacts. No decision will be made to implement any action alternative until the NEPA process is completed.

DATES: A public scoping meeting will be held in Key West, FL, to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. The public meeting will be held on Tuesday, August 24, 2004, from 7 p.m. to 9 p.m.

ADDRESSES: The public meeting will be held at Doubletree Grand Key Resort, 3990 S. Roosevelt Blvd., Key West, FL 33040.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command, Southern Division (NAVFAC EFD SOUTH), P.O. Box 190010, North Charleston, SC 29419–9010; Attn: Ms. Olivia Westbrook, telephone (843) 820–5841; facsimile (843) 820–7465; e-mail: *Olivia.westbrook@navy.mil.* The point of contact at NAS Key is Richard Ruzich. He may be reached by telephone at (305) 293–2785; facsimile (305) 293–2542; or e-mail: *Ruzichri@naskw.navy.mil.*

SUPPLEMENTARY INFORMATION: Historically, the Boca Chica Field did not have dense vegetation surrounding the area, as is the desired condition for any airfield or airport. However, due to a lack of maintenance and rapid growth rate, excess vegetation has encroached upon the clear zones and now creates serious unsafe conditions on the airfield. In order to bring the airfield back into compliance with Navy and FAA safety regulations, some trees and shrubs within these safety clearance zones will have to be removed. Some portions of this removal process may have potential impacts to federally listed species and their habitat and the filling of wetlands. The primary species of concern is the endangered LKMR. Additional concerns involve wetlands within the project area that include freshwater marsh, saltmarsh, freshwater hardwoods, and mangroves (the predominant species). The Navy has conducted extensive research and surveyed Boca Chica Field in order to identify the non-compliant areas and develop a restoration/construction methodology. During this process the best possible technique(s) for restoring and enhancing the airfield clearance safety areas while minimizing the impacts of the restoration methods to the LKMR and wetlands were delineated.

The EIS will consider three alternatives: (1) Complete compliance with aviation regulations. Under this alternative, maintenance would be completed to allow the airfield to operate under the conditions originally established for the Boca Chica Field. Maintenance activities would include clearing, grading, and grubbing vegetation within airfield safety clearance zones. All trees within the Primary Surface Area, Type I, Type II, portions of Type III, and Transitional areas would be removed, and the area completely cleared of stumps (grubbing) and re-graded. Typical mechanized equipment would be used since the entire area would be disturbed due to grubbing and re-grading activities and there would be no benefit to the use of specialized low-impact equipment. Restoration of the existing drainage system would be implemented by removal of the mangroves in the canals and on the banks and dredging to original invert elevations. (2) The second alternative would include a combination of vegetation management, filling of wetlands, and salt marsh conversion. Restoration of the existing drainage system would be implemented by removal of the mangroves in the canals and dredging to original invert elevations. The proposed action would improve airfield conditions to correct deficiencies temporarily waivered by the Navy, and return conditions to an airfield that complies with FAA and Navy standards with an acceptable level

of safety. (3) The No Action Alternative in accordance with Section 1502.14(d) of the NEPA regulations means that an action would not take place and the resulting environmental effects from taking no action would be compared with the effects of allowing the proposed action to move forward. Implementation of the No Action alternative would only allow the performance of minimal airfield maintenance that is eligible for Categorical Exclusion under NEPA requirements. Under this alternative, Boca Chica Field would remain in non-compliance with airfield safety criteria and NAS Key West operations would continue to be negatively impacted by existing conditions.

The Navy is initiating the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, State, and local agencies, as well as interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern for consideration in the EIS. The Navy will consider these comments in determining the scope of the EIS.

Written comments must be postmarked by September 21, 2004, and should be mailed to: Restoration of Airfield Clear Zones and Storm Water Drainage Systems at NAS Key West, FL EIS, c/o Commander, NAVFAC EFD SOUTH, P.O. Box 190010, North Charleston, SC 29419–9010, Attn: Code ES12/OW (Olivia Westbrook), telephone (843) 820–5841, facsimile (843) 820–7465, or by E-Mail *olivia.westbrook@navy.mil.*

Dated: August 3, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–18008 Filed 8–5–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–582–001, FERC–582]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

July 30, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of April 14, 2004 (69 FR 19829–19830) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by August 31, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–582–001.

Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, Word Perfect, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–582 "Electric Fees and Annual Charges."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0132.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) which authorizes the Commission to establish fees for its services. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (42 U.S.C. 71778) authorizes the Commission "to assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year." In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and then subtracts all electric regulatory program filing fee collections to determine the total collectible electric regulatory program costs. It then uses the data submitted under the Commission's information collection requirement FERC–582 to determine the total megawatt-hours of transmission of electric energy in interstate commerce. This is measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent these later megawatt-hours were not

separately reported as unbundled transmission). This information must be reported to three decimal places. Public utilities and power marketers subject to these annual charges must submit FERC–582 to the Commission's Office of the Secretary by April 30 of each year. The Commission issues bills for annual charges, and then public utilities and power marketers must pay the charges within 45 days of the Commission's issuance of the bill.

The Commission's staff uses companies' financial information filed under waiver provisions to evaluate requests for a waiver or exemption of the obligation to pay a fee for an annual charge. The Commission implements the filing requirements in the Code of Regulations (CFR) under 18 CFR part 381, sections 381.108 and 381.302 and part 382, section 382.201(c).

5. *Respondent Description:* The respondent universe currently comprises 192 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 768 total hours, 192 respondents (average per year), 1 response per respondent, and 4 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 768 hours/2080 hours per years × $107,185 per year = $39,576. The cost per respondent is equal to $206.

Statutory Authority: 31 U.S.C. 9701 and 42 U.S.C. 71778.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1733 Filed 8–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–36–000 and CP04–41–000]

Weaver's Cove Energy, L.L.C.; Mill River Pipeline, L.L.C.; Notice of Availability of the Draft Environmental Impact Statement and the Draft General Conformity Determination for the Proposed Weaver's Cove LNG Project

July 30, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities in Bristol County, Massachusetts proposed by Weaver's Cove Energy, L.L.C. and Mill River Pipeline, L.L.C. (collectively referred to as Weaver's Cove Energy) in the above-referenced dockets. A draft General Conformity Determination was also prepared to assess the potential air quality impacts associated with construction and operation of the proposed project and is included as appendix H of the draft EIS.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives; and requests comments on them.

The draft EIS was also prepared to satisfy the requirements of the Massachusetts Environmental Policy Act (MEPA). The Massachusetts Executive Office of Environmental Affairs issued a Certificate to Weaver's Cove Energy on August 28, 2003, that established a Special Review Procedure to guide the MEPA review of the Weaver's Cove LNG Project. This Special Review Procedure provides for a coordinated NEPA/MEPA review and allows the draft and final EISs to serve as the draft and final Environmental Impact Reports (EIRs) required under MEPA, provided the EISs address MEPA's EIR requirements, as specified in the MEPA scope for the project that was issued concurrently with the August 28, 2003, Special Review Procedure.

Weaver's Cove Energy's proposed facilities would transport up to 800 million cubic feet per day (MMcfd) of imported natural gas to the U.S. market. In order to provide LNG import, storage, and pipeline transportation services, Weaver's Cove Energy requests Commission authorization to construct, install, and operate an LNG terminal and natural gas pipeline facilities.

The draft EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities:

- A ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 145,000 cubic meters (m^3);
- A 200,000 m^3 (equivalent to 4.4 billion standard cubic feet of gas) full containment LNG storage tank;
- Vaporization equipment, sized for a normal sendout of 400 MMcfd and a maximum sendout of 800 MMcfd;
- Four LNG truck loading stations;
- Ancillary utilities, buildings, and service facilities;
- Two 24-inch-diameter natural gas sendout pipelines, totaling approximately 6.1 miles in length; and
- Two meter and regulation stations.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS or the draft General Conformity Determination may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP04–36–000;
- Label one copy of your comments for the attention of Gas Branch 1, PJ11.1; and
- Mail your comments so that they will be received in Washington, DC on or before September 20, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

In addition to or in lieu of sending written comments, we invite you to attend the public comment meetings we will conduct in the project area. The locations and times for these meetings are listed below:

September 8, 2004, 7 p.m. (e.s.t.), Venus de Milo Restaurant, 75 GAR Highway, Swansea, Massachusetts 02777, (508) 678–3901.

September 9, 2004, 7 p.m. (e.s.t.), Gaudet Middle School, 1113 Aquidneck Avenue, Middletown, RI 02842, (401) 846–6395

These meetings will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related

information. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS and draft General Conformity Determination, a final EIS, including a final General Conformity Determination, will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS and draft General Conformity Determination.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1734 Filed 8–5–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

July 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major license.

b. *Project No.:* 11945–001.

c. *Date Filed:* June 30, 2004.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Dorena Lake Dam Project.

f. *Location:* On the Row River, near the Town of Cottage Grove, Lane County, Oregon. The project would occupy less than 1 acre of Federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745–0834.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *dianne.rodman@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: August 30, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the U.S. Army Corps of Engineers' existing Dorena Lake dam and reservoir, and would consist of the following facilities: (1) A 9-foot-diameter steel pipe, about 350 feet long, extending from the reservoir through the north dam abutment; (2) a new powerhouse, near the existing spillway stilling basin 250 feet downstream from the concrete section of the dam, having a total installed capacity of 8,300 kilowatts; (3) a new concrete-lined channel discharging flows into the river channel immediately below the existing stilling basin; (4) a new valve house near the existing stilling basin; (5) a new 15-kilovolt underground transmission line, about 500 feet long; and (6) appurtenant facilities. The average annual generation is estimated to be 17.5 gigawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket

number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter: August 2004.

Request Additional Information: August 2004.

Issue Acceptance Letter: December 2004.

Issue Scoping Document 1 for comments: January 2005.

Request Additional Information (if necessary): March 2005.

Issue Scoping Document 2: March 2005.

Notice of application is ready for environmental analysis: March 2005.

Notice of the availability of the draft EA: September 2005.

Initiate 10(j) Process: November 2005.

Notice of the availability of the final EA: March 2006.

Ready for Commission's decision on the application: June 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1732 Filed 8–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–10–000]

Enhanced Reporting of Natural Gas Storage Inventory Information; Notice of Technical Conference and Request for Written Comments on Enhanced Reporting of Natural Gas Storage Inventory Information

August 2, 2004.

The Federal Energy Regulatory Commission (Commission) will hold a technical conference to explore whether the Commission should institute a generic rulemaking to consider whether the Commission should require interstate natural gas pipeline companies and other owners and operators of natural gas storage facilities to electronically post each day actual natural gas storage inventory levels on their systems for the preceding day. Specifically, the technical conference will explore the feasibility, usefulness and appropriateness of requiring posting on a standardized basis for the previous gas day (1) Net aggregate actual injection or withdrawal data; (2) actual total available working gas; and (3) actual total storage inventory volume. The conference will take place on September 28, 2004, at 9:30 a.m. (e.s.t.) in the Commission Meeting Room at the Commission's headquarters, 888 First Street, NE., Washington, DC. The Commission's staff will conduct the conference and members of the Commission may attend it. In preparation for the technical conference, the Commission invites all interested parties to submit written comments, addressing the subject and questions discussed below, on or before September 10, 2004.[1]

Background

Every Thursday at 10:30 a.m. (e.s.t.), the United States Department of Energy's Energy Information Administration (EIA) releases a report of natural gas storage inventory levels for the United States, including for Eastern, Western and Producing regions. The EIA compiles this report based on information provided to it by a sampling of storage owners and operators, usually on the Monday that precedes the Thursday report. The reporting companies provide weekly net aggregate storage inventory information for the week that ended with the gas day that ended on the preceding Friday. The EIA's release of its weekly report is a regularly watched event in the natural gas industry because changes in natural gas storage inventory levels can affect commodity prices, the price of NYMEX natural gas futures contracts, other physical and financial transactions, and a variety of transportation and storage transactions. Increased volatility observed in the trading of NYMEX natural gas futures contracts immediately following the EIA's release of its weekly storage report suggests the importance to many industry participants of information related to natural gas storage inventory levels. In addition, the order the Commission is issuing today approving Stipulation and Consent Agreements (Agreements) in Docket No. IN04–2–000, indicates that some market participants obtained non-public storage inventory information sourced from interstate pipelines, or in one case, a local distribution company (LDC), because of the perceived market value of this information.

The Commission currently requires interstate pipelines that provide service under blanket certificates pursuant to subparts B and G of part 284 of the Commission's regulations, to post the availability of all transportation services whenever capacity is scheduled at receipt points, on the mainline, at delivery points and at storage fields. 18 CFR 284.13(d)(1). This regulation does not address storage activity that is not subject to daily nomination and scheduling, such as no-notice storage and transportation services. Accordingly, pipelines have reported storage activities in different ways.

The interstate pipeline companies that executed the Agreements in Docket No. IN04–2–000 have indicated that they are, or soon will be, posting weekly net aggregate storage inventory information. Other interstate natural gas pipelines post storage inventory information on a daily basis, but may post injections and withdrawals attributable to no-notice contractual service on a weekly basis. Alternatively, storage activities attributable to no-notice contractual service may be partially posted, depending on whether customers make nominations at the pipeline's storage points for this service.

Inconsistent posting of storage activities and inventories hinders efforts to compare and make sense of this information, leading to less efficient market outcomes. Current posting

[1] The Commission issued an order today, in Docket No. IN04–2–000, approving three Stipulation and Consent Agreements (Agreements). These Agreements state that the two interstate natural gas pipeline companies and one local distribution company that signed the Agreements communicated their respective non-public storage inventory information to customers or industry participants.

practices impair the value of this information as a useful tool to understand and anticipate demand and other relevant industry trends. For example, traders who seek to determine optimal hedging strategies during peak periods or pipeline customers who seek to anticipate whether nominations to secondary points will likely be honored would benefit from more consistent and timely storage inventory information.

In addition, although section 284.13(d)(1) mandates reporting of scheduled volumes, actual volumes can be a superior indicator of inventory activity. Actual volumes can deviate significantly from scheduled volumes, particularly during periods of high demand.

Electronic metering permits natural gas pipeline companies to rapidly post net aggregate storage information on a daily basis. Actual, daily posting of day-before injection or withdrawal activity would speed communication of storage data to the public and provide nearer-in-time information than is provided in the EIA's weekly report. Increased transparency promotes efficiency and could deter abuses associated with non-public storage inventory information.

LDCs and intrastate pipelines that provide service pursuant to subpart C of part 284 of the Commission's regulations often own and operate substantial storage capacity. Many of these entities do not post storage inventory information. Posting such information would contribute to the goals of market transparency and abuse deterrence. However, posting of uniform storage inventory information could affect the often differing obligations and business purposes of these entities relative to interstate pipeline companies. Further, the Commission's jurisdiction over these entities is more limited than it is over interstate pipeline companies. The technical conference will seek to explore the feasibility and usefulness of requiring LDCs and intrastate pipelines that provide service pursuant to subpart C of part 284 of the Commission's regulations to post storage inventory information.

Questions for Comment

The Commission seeks comments on the following questions:

I. Questions for Interstate Natural Gas Pipeline Companies, Their Customers and Other Industry Participants

A. How would standardized, daily posting of actual storage injection or withdrawal activity contribute to market transparency? What are the specific efficiencies that would result from such posting?

B. What costs and inefficiencies does the industry (or any parts of it) experience because of the current inconsistency of storage inventory reporting?

C. Are participants in physical and financial commodity markets concerned with price volatility following the release of the EIA's weekly storage report? Would improved posting of storage information be likely to reduce price volatility?

D. How important is posted storage inventory information to buying and selling gas and executing financial transactions?

E. How do pipeline customers use posted storage information to make decisions regarding nominations, the purchase of storage capacity, the purchase of gas, and other commodity and operational decisions?

F. How important is the timeliness of posting storage inventory information? Specifically, to what extent would daily reporting benefit the industry relative to the current daily and weekly posting of storage-related information by pipelines and the EIA?

G. In what ways and to what extent would posting of actual injection or withdrawal volumes be superior to posting scheduled injection or withdrawal volumes?

H. Could posting be fully consistent with the data that reporting pipelines provide the EIA on a weekly basis? What could be the cause for any differences and how significant would they be?

I. What costs would pipelines expect to incur to post standardized, daily actual injection or withdrawal volumes on a day-after basis? What concerns, if any, do pipelines have regarding the feasibility from a technical perspective of accurate storage inventory posting?

J. How should pipeline companies address the posting of inaccurate information and information that needs to be subsequently adjusted?

II. Questions for Intrastate Pipeline Companies and LDCs That Provide Service Pursuant to Subpart C of Part 284 of the Commission's Regulations, Their Customers and Other Industry Participants

A. To what extent do such intrastate pipeline companies and LDCs post storage inventory information? What storage information do they post?

B. What concerns would such intrastate pipeline companies and LDCs have with respect to posting their daily actual injection orwithdrawal activity on a day-after basis?

C. Does the Commission have the authority under Subpart C of 284 of its regulations, or under other statutory or regulatory authority, to require intrastate pipeline companies or LDCs to post storage inventory information?

D. What contribution to market transparency and efficiency would posting daily actual injection or withdrawal activity on a day-after basis have for natural gas markets and for customers of such intrastate pipeline companies and LDCs?

E. What costs would such intrastate pipeline companies and LDCs expect to incur to post standardized, daily actual injection or withdrawal volumes on a day-after basis? What concerns, if any, do intrastate pipeline companies and LDCs have regarding the feasibility from a technical perspective of such posting?

F. How should intrastate pipeline companies and LDCs address the posting of inaccurate information and information that needs to be subsequently adjusted?

Public Comment Information

As noted above, in preparation for the technical conference, the Commission invites interested persons to submit written comments on the matters raised in this notice, including any related matters or alternative proposals that commenters may wish to discuss. All written comments should be submitted on or before September 10, 2004. We are hereby establishing a proceeding, Docket No. AD04–10–000, to provide an opportunity for all interested persons to submit comments, and all future actions with respect to the technical conference will also be taken under this docket number.

All comments should include an executive summary that does not exceed two pages. Comments should not exceed 15 pages. In addition, if answering a specific question, please identify the question. To conserve time and avoid unnecessary expense, persons with common interests or views are encouraged to submit joint comments. Comments related to this proceeding may be filed in paper format or electronically. However, the Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

Documents filed electronically via the Internet can be prepared in a variety of formats, including MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's Web site at *http://www.ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and

password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. In addition, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the eLibrary link.

Conference Information

As noted above, upon evaluation of the comments requested herein, the Commission will hold a technical conference open to all interested persons. The technical conference will be held on September 28, 2004, at 9:30 a.m. (e.s.t.) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

There is no charge to attend the conference and no requirement to register in advance for the conference. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at (202) 347–3700 or (800) 336–6646. Transcripts will be placed in the public record ten days after the Commission receives them.

Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection at (703) 993–3100 as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

Interested parties are urged to watch for further notices providing more information on the conference. You may register online at *http://www.ferc.gov/docs-filing/esubscriptions.asp* to be notified via email of new issuances and filings related to this docket. For additional information please contact John Kroeger at (202) 502–8177 or by e-mail at *john.kroeger@ferc.gov*, or Thomas Pinkston at (202) 502–6335 or by e-mail at *thomas.pinkston@ferc.gov*.

By direction of the Commission.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1735 Filed 8–5–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7798–9]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method for NO_2 and Three New Equivalent Methods for $PM_{2.5}$

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of one new reference method and three new equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, one new reference method for measuring concentrations of NO_2, and three new equivalent methods for measuring concentrations of $PM_{2.5}$ in ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of those ambient air pollutants for which the EPA has established National Ambient Air Quality Standards (NAAQSs), as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs. The EPA hereby announces the designation of one new reference method for measuring concentrations of NO_2 in ambient air and three new equivalent methods for measuring concentrations of particulate matter in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for NO_2 is an automated method (analyzer) that utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. The newly designated method is described as follows:

RFNA–0804–152, "SIR S.A. Model S–5012 Chemiluminescent Nitrogen Oxides Analyzer," operated with a full scale range of 0–500 ppb, at any temperature in the range of 20 °C to 30 °C, with the integration time set to 1 minute, with the "initial zero" disabled, and with a specified Teflon particulate filter installed in the sample inlet filter holder.

An application on behalf of the SIR S.A. Model S–5012 analyzer was received on January 12, 2004. The method is available commercially from Sistemas Instalaciones y Redes, S.A. (SIR S.A.), Avenida de la Industria, 3, 28760 Tres Cantos (Madrid), Spain.

The three new equivalent methods for $PM_{2.5}$ are manual monitoring methods that are based on particular, commercially available $PM_{2.5}$ samplers. The methods are identified as Class II equivalent methods, which means that they are based on an integrated, filtered air sample with gravimetric analysis, but with substantial deviation from the specifications for reference methods set forth in appendix L of 40 CFR part 50. In this case, each of the three new equivalent method samplers is very similar to a corresponding sampler that has been previously designated by the EPA as a reference method sampler for $PM_{2.5}$ (or PM_{10}). However, these newly designated equivalent method samplers use a specific, very sharp cut cyclone (VSCC™) as the principle particle size separation device rather than the WINS impactor used in the corresponding reference method sampler. The newly designated Class II equivalent methods are identified as follows:

EQPM–0804–153, "Thermo Electron Corporation Model RAAS2.5–100 FEM" $PM_{2.5}$ Ambient Air Sampler, configured with a BGI VSCC" Very Sharp Cut Cyclone particle size separator and operated with software version 06.0B.00 configured for "Single 2.5" operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Model RAAS2.5–100 FEM Operator's Manual and VSCC" supplemental manual, and in accordance with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

EQPM–0804–154 "Thermo Electron Corporation Model RAAS2.5–200 FEM" $PM_{2.5}$ Ambient Air Sampler, configured with a BGI VSCC" Very Sharp Cut Cyclone particle size separator and operated with software version 06.0B.00, for 24-hour continuous sample periods at a flow rate of

16.67 liters/minute, in accordance with the Model RAAS2.5–200 FEM Operator's Manual and VSCC™ supplemental manual, and in accordance with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

EQPM–0804–155 "Thermo Electron Corporation Model RAAS2.5–300 FEM" $PM_{2.5}$ Sequential Ambient Air Sampler, configured with a BGI VSCC™ Very Sharp Cut Cyclone particle size separator and operated with software version 06.0B.00 configured for "Multi 2.5" operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Model RAAS2.5–300 FEM Operator's Manual and VSCC™ supplemental manual, and in accordance with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

An application for equivalent method determinations for these methods was received by the EPA on March 24, 2004. The samplers are available commercially from Thermo Electron Corporation, 27 Forge Parkway, Franklin, Massachusetts 02038.

A test analyzer or test samplers representative of each of these methods have been tested by the corresponding applicants in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicants, the EPA has determined, in accordance with part 53, that each of these methods should be designated as reference or equivalent methods, as indicated. The information submitted by the applicants will be kept on file, either at the EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved achieve storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, measurement range, configuration, or sample period) specified in the applicable designation method description (see the identification of the methods above). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1," EPA/454/R–98/004, and with the Quality Assurance Guidance Document 2.12 (available at *http://www.epa.gov/ttn/amtic/pmqainf.html*). Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a reference or equivalent method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such changes.

In the particular case of the three new $PM_{2.5}$ Class II equivalent methods, a corresponding $PM_{2.5}$ (or PM_{10}) reference method sampler configuration may be converted to the equivalent method configuration by replacement of the WINS impactor (or the PM_{10} extender tube for the PM_{10} version) with the BGI VSCC™ device specified in the equivalent method description. The VSCC™ device should be purchased from the sampler manufacturer, who will also furnish installation, conversion, operation, and maintenance instructions for the VSCC™ as well as a new equivalent method identification label to be installed on the sampler. If the conversion is to be permanent, the original designated reference method label should be removed from the sampler and replaced with the new designated equivalent method label. In a case where a converted sampler may need to be restored later to its original reference method configuration (such as for a specific application requiring a reference method) by re-installation of the WINS impactor (or PM_{10} extender tube), the new equivalent method label may be installed on the sampler without removing the original reference method label, such that the sampler bears both labels. (Alternatively, the new label may describe multiple configurations.) In this situation, the sampler shall be clearly and conspicuously marked by the operator to indicate its current configuration (*i.e.* WINS/$PM_{2.5}$ reference method, VSCC™/$PM_{2.5}$ equivalent method, or PM_{10} reference method) so that the monitoring method is correctly identified and the correct method code is used when reporting monitoring data obtained with the sampler.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated by the EPA as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation

applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of any of these methods should be directed to the appropriate applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 04–18028 Filed 8–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6654–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 5647167 or *http://www.epa.gov/compliance/nepa/.* Weekly receipt of Environmental Impact Statements filed July 26, 2004, through July 30, 2004, pursuant to 40 CFR 1506.9.

EIS No. 040348, DRAFT EIS, NPS, OR, Crater Lake National Park General Management Plans, Implementation, Klamath, Jackson and Douglas Counties, OR, Comment Period Ends: October 5, 2004, Contact: Terry Urbanowski (303) 969–2277.

EIS No. 040349, FINAL EIS, BLM, CO, Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Resource Management Plan, Implementation, Mesa County, CO, Wait Period Ends: September 7, 2004, Contact: Jane Ross (970) 244–3027.

EIS No. 040351, FINAL EIS, COE, CA, Port J. Long Beach Pier J South Terminal Expansion Project, Additional Cargo Requirements Associated with Growing Export and Import Volumes, Port Master Plan (PMP) Amendment, COE Section 404, 401 and 10 Permits, City of Long Beach, CA, Wait Period Ends: September 07, 2004, Contact: Aaron O. Allen (805) 585–2148.

EIS No. 040352, REVISED DRAFT EIS, AFS, CA, Cottonwood Fire Vegetation Management Project, Control Vegetation that is Competing with Conifer Seedlings, Sierraville Ranger District, Tahoe National Forest, Sierra County, CA, Comment Period Ends: September 20, 2004, Contact: Teri Bank (530) 994–3401.

EIS No. 040353, DRAFT EIS, AFS, MO, East Fredericktown Project, To Restore Shortleaf Pine, Improve Forest Health, Treat Affected Stands and Recover Valuable Timber Products, Mark Twain National Forest, Potosi/Fredericktown Ranger District, Bollinger, Madison, St. Francois and Ste. Genevieve Counties, MO, Comment Period Ends: September 20, 2004, Contact: Tom McGure (573) 438–5427.

EIS No. 040354, FINAL EIS, USN, MS, Purchase of Land in Hancock County, Mississippi, for a Naval Special Operations Forces Training Range, To Improve Riverine and Jungle Training Available, John C. Stennis Space Center, Hancock County, MS, Wait Period Ends: September 7, 2004, Contact: Richard Davis (843) 820–5589.

EIS No. 040355, FINAL EIS, BLM, CO, Silverton Outdoor Learning and Recreation Center, Authorization for Long-Term Use of 1,300 acres for Backcountry-type Skiing, Summer Recreation and Educational Activities, Amendment of the San Juan/San Miguel Resource Management Plan, San Juan County, CO, Wait Period Ends: September 7, 2004, Contact: Richard Speegle (970) 375–3310. This document is available on the Internet at: *http://www.co.blm.gov/sjra/index.html/.*

EIS No. 040356, DRAFT EIS, AFS, SD, Southeast Geographic Area Rangeland Management on National Forest System Lands of the Buffalo Gap National Grassland, To Implement Best Management Grazing Practice, Buffalo Gap National Grassland, Falls River Ranger District, Fall River County, SD, Comment Period Ends: September 20, 2004, Contact: Michael L. Erk (605) 745–4107.

EIS No. 040357, DRAFT EIS, FRC, MA, Weaver's Cove Liquefied Natural Gas (LNG) Project, Construct and Operate Onshore Liquefied Natural Gas Import and Interstate Natural Gas Transmission Facilities, Falls River, Bristol County, MA, Comment Period Ends: September 20, 2004, Contact: Roberta Coulter (202) 502–8584.

EIS No. 040358, DRAFT EIS, NAS, HI, Outrigger Telescopes Project, Proposed for the W.M. Keck Observatory Site within the Mauna Kea Science Reserve, Funding, Construction, Installation and Operation, Island of Hawai'i, Comment Period Ends: September 30, 2004, Contact: Carl B. Pitcher (202) 358–0291.

EIS No. 040359, FINAL EIS, FHW, WI, Burlington Bypass State Trunk Highway Project, Construction, from WI–36, WI–11 and WI–83, Funding and COE Section 404 Permit, In the City of Burlington, Racine and Walworth Counties, WI, Wait Period Ends: September 7, 2004, Contact: David Platz (608) 829–7509.

EIS No. 040360, FINAL EIS, FHW, AK, Gravina Access Project, Transportation Improvements between Revillagigedo Island and Gravina Island, Funding, Endangered Species Act 7, NPDES and US Army COE Section 404 Permits Issuance, Ketchikan Gateway Borough, AK, Wait Period Ends: September 7, 2004, Contact: Mark Dalton (907) 644–2000. This document is available on the Internet at: *http//www.gravina-access.com/.*

EIS No. 040361, DRAFT SUPPLEMENT, NOA, NC, FL, SC, GA South Atlantic Shrimp Fishery Management Plan, Amendment 6, Propose to Amend the Bycatch Reduction Device (BRD) Testing Protocol System, South Atlantic Region, Comment Period Ends: September 20, 2004, Contact: Roy E. Crabtree (727) 570–5301.

Dated: August 3, 2004.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 04–18030 Filed 8–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6654–4]

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 the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–BIA–K65270–NV Rating LO, Weber Dam Repair and Modification Project, Propose to Repair and Modify Dam, Walker River Paiute Tribe, Right-of-Way Grant and U.S. Army COE Section 404 Permit, Walker River Valley, Lyon and Mineral Counties, NV.

Summary: EPA expressed a lack of objections but recommended that the Final EIS clarify Clean Water Act requirements on placing dredged or fill material in waters of the United States.

ERP No. D–FTA–C40163–NY Rating EC2, Fulton Street Transit Center, Construction and Operation, To Improve Access to and from Lower Manhattan to Serve 12 NYCT Subway Lines, Metropolitan Transportation Authority (MIA), MTA New York City Transit (NYCT), New York, NY.

Summary: EPA expressed environmental concerns with the impacts to air quality. EPA indicated that additional analysis of both the direct and cumulative impacts to air quality (NO_X, NO2, and ozone) will be necessary and asked that additional information regarding the mitigation proposals and commitments be provided.

ERP No. D–FTA–C54009–00 Rating EC2, Permanent World Trade Center (WTC) PATH Terminal Project, Reconstruction of a Permanent Terminal at the WTC Site in Lower Manhattan, Port Authority Trans-Hudson (PATH), Several Permits Required for Approval, The Port Authority of New York and New Jersey, NY and NJ.

Summary: EPA expressed environmental concerns with the impacts to air quality. EPA also indicated that additional analysis of the cumulative impacts to air quality (NO_X and VOC) will be necessary and requested that more information regarding the mitigation proposals and commitments be provided.

ERP No. DS–FHW–G40169–AR Rating LO, Springdale Northern Bypass Projects, U.S. Highway 412 Construction, Additional Information Designation of a Preferred Alternative, Funding and NPDES Permit Issuance, Benton and Washington Counties, AR.

Summary: EPA had no objection to the selection of the preferred alternative.

Final EISs

ERP No. F–AFS–J65400–UT East Fork Fire Salvage Project Timber Harvesting of Dead and Dying Trees, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary: EPA continues to express concern relating to soil erosion, disturbance, and compaction; runoff and potential degradation of water quality and habitats in streams and affected reservoirs; sedimentation of streams and water-storage reservoirs; and fish and wildlife impacts to sensitive species.

ERP No. F–DOE–E09014–KY Paducah, Kentucky, Site Depleted Uranium Hexafluoride Conversion Facility, Construction and Operation, McCraken County, KY.

Summary: EPA continues to express concern since radiological monitoring, appropriate storage and disposition of radioactive waste will be necessary during the operation phase.

ERP No. F–FHW–E40794–NC Second Bridge to Oak Island Transportation Improvement Project, SR–1104 (Beach Drive) to NC–211, Funding, U.S. Army COE Section 404 and US Coast Guard Bridge Permits Issuance, Brunswick County, NC.

Summary: EPA continues to be concerned due to a change in the purpose and need statement and because the commitments for offsite compensatory wetlands and habitat mitigation are uncertain.

ERP No. F–FHW–H40176–00 US 81 Highway, Yankton Bridge Replacement, Missouri River Crossing between the City of Yankton, Yankton County, South Dakota and Cedar County, Nebraska, Funding and Permit Issuance, SD and NE.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–J40155–CO CO–9 (Frisco to Breckenridge) Highway Improvements Project to Improve a 14.5-kilometer (9-mile) stretch of CO–9 between the Towns of Frisco and Breckenridge to Decrease Travel Time, Improve Safety, Support Transportation needs of Local and Regional Travelers, Funding, Right-of-Way and US Army COE Section 404 Permits, Summit County, CO.

Summary: EPA continued to express concerns due to wetland impacts.

ERP No. F–JUS–G81011–TX Rio Grande Operation Project, Reduction or Elimination of Illegal Drug Activities and Illegal Immigrants, Starr, Hidalgo and Cameron Counties, TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11035–CA Military Family Housing (MFH) in the San Diego Region, Construction of 1,600 MFH Units, Three MFH Sites are Located in the Marine Corps Air Station (MCAS), Miramar in the City of San Diego, San Diego County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–FHW–F40118–MI US–31 Freeway Connection to I–94, Napier Avenue to I–94 Transportation Improvements, Berrien County, MI.

Summary: Since EPA's previous concerns have been resolved, EPA has no objection to the proposed action.

Dated: August 2, 2004.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 04–18031 Filed 8–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0173; FRL–7643–3]

FIFRA Scientific Advisory Panel; Notice of Cancellation of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The July 29 and 30, 2004, Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) meeting to consider and review Dimethoate issues related to the hazard and dose-response assessment was canceled. Any information related to the rescheduling of this meeting will be announced in a future **Federal Register** notice. For further information, please notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** or see the **Federal Register** of June 21, 2004 (69 FR 34348) (FRL–7365–1).

FOR FURTHER INFORMATION CONTACT: Myrta Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address:*christian.myrta@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 3, 2004.

Joseph Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 04–18022 Filed 8–5–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7799–1]

Clean Water Act Section 303(d): Availability of EPA's Decision To Add Waters and Pollutants to Colorado's 2004 List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Region VIII of the EPA is hereby providing notice, and requesting public comment on EPA's decision to identify additional water quality limited segments and associated pollutants in Colorado to be listed pursuant to Clean Water Act section 303(d)(2). Section 303(d)(2) of the Clean Water Act requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On July 26, 2004, EPA partially approved and partially disapproved Colorado's section 303(d) list submittal for the 2004 listing cycle. Specifically, EPA approved Colorado's listing of 117 waters, associated pollutants, and associated priority rankings. EPA disapproved Colorado's decisions not to list six waterbodies and associated pollutants and one pollutant for a waterbody already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the year 2004 section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants (shown in Table 1) to Colorado's 2004 section 303(d) list, as required by EPA's Public Participation regulations (40 CFR part 25). EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Colorado's list.

DATES: Comments must be submitted to EPA on or before September 20, 2004.

ADDRESSES: Comments on the proposed decisions should be sent to Kathryn Hernandez, TMDL Team (8EPR–EP), U.S. Environmental Protection Agency Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466, telephone (303) 312–6101, facsimile (303) 312–6339, e-mail *hernandez.kathryn@epa.gov*. Oral comments will not be considered. Copies of EPA's decision concerning Colorado's list that explain the rationale for EPA's decisions can be obtained at EPA Region VIII's Web site at *http://www.epa.gov/region08/water/tmdl*, or by writing or calling Ms. Hernandez at the above address. The full administrative record containing background technical information is on file and may be inspected at the U.S. EPA, Region VIII Technical Library found in the Environmental Information Service Center (EISC). The Library and Service Center are located on the ground floor at Denver Place, 999 18th Street, Denver Colorado. The Library is open to the public from 10 a.m. to 4 p.m. The Library can be contacted by calling the Service Center at (303) 312–6312 or (800) 227–8917. Arrangements to examine the administrative record may also be made by contacting Kathryn Hernandez.

FOR FURTHER INFORMATION CONTACT: Kathryn Hernandez at (303) 312–6101 or Bruce Zander (TMDL Coordinator) at (303) 312–6846 or *zander.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings, identify the pollutants causing the impairment, and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Colorado submitted to EPA its listing decisions under section 303(d)(2) on March 18, 2004. On July 26, 2004, EPA approved Colorado's listing of 117 waters and associated priority rankings. EPA disapproved Colorado's decisions not to list six water quality limited segments and associated pollutants as well as one pollutant for a segment already on the State's list. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2004 section 303(d) list. EPA solicits public comment on its identification of the additional waters, associated pollutants and priority rankings, for inclusion on Colorado's 2004 section 303(d) list.

TABLE 1.—LIST OF WATERS AND POLLUTANTS FOR ADDITION TO COLORADO'S 2004 CWA SECTION 303(D) LIST

Waterbody description	Pollutant(s)	Water quality standard not met	Priority ranking
Red Mountain Creek (from East Fork of Red Mountain Creek to Uncompahgre River) Segment COGUUN06b.	Copper, lead, zinc	Aquatic life use	Low.
West Fork of Clear Creek (from Woods Creek to Clear Creek mainstem) Segment COSPCL05.	Zinc	Zinc numeric standard (acute) for aquatic life use.	Low.
Middle South Platte River (from Big Dry Creek to Highway 60) Segment COSPMS01.	Dissolved oxygen	Dissolved oxygen numeric standard for aquatic life use.	Low.
Blue River Tributaries (Camp Creek, Jones Gulch) Segment COUCBL06.	pH	pH numeric standard for aquatic life use.	Low.
Blue River Tributaries (Keystone Gulch, Mozart Creek) Segment COUCBL08.	pH	pH numeric standard for aquatic life use.	Low.
Bear Creek (from Evergreen Lake to Harriman Ditch) Segment COSPBE01.	Temperature	Aquatic life use	Low.

TABLE 1.—LIST OF WATERS AND POLLUTANTS FOR ADDITION TO COLORADO'S 2004 CWA SECTION 303(D) LIST—Continued

Waterbody description	Pollutant(s)	Water quality standard not met	Priority ranking
Dolores River (from below McPhee Reservoir to Bradfield Ranch Bridge) Segment COSJDO04.	Unknown	Aquatic life use	Low.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 30, 2004.

Max H. Dodson,

Assistant Regional Administrator, Office of Ecosystems Protection and Remediation.

[FR Doc. 04–18027 Filed 8–5–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval.

July 30, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 7, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or household; Business or other for-profit. entities; and State, local, or tribal Government.

Number of Respondents: 35,036.

Estimated Time per Response: 1–10 hours.

Frequency of Response: Recordkeeping; On occasion and biennial reporting requirements; Third party disclosure.

Total Annual Burden: 146,794 hours.

Total Annual Cost: $51,187,500.

Privacy Impact Assessment: Yes.

Needs and Uses: On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission also released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* The rules and requirements implementing section 258 can be found primarily at 47 CFR part 64. The modified and revised rules will strengthen the ability of our rules to deter slamming, while protecting consumers from carriers that may take advantage of consumer confusion over different types of telecommunications services. This *Third Order on Reconsideration* also contains a *Further Notice of Proposed Rulemaking,* in which we seek comment on rule modification with respect to third party verifications. On July 16, 2004, the Commission released the *First Order on Reconsideration and Fourth Order on Reconsideration,* CC Docket Nos. 94–129 and 00–257, FCC 04–153 (*Reconsideration Order*), which the Commission modified rule 64.1120(e)(3)(iii). As noted, when subscribers are switched between carriers as a result of a negotiated sale or transfer or the exiting carrier's bankruptcy, we believe the acquiring carrier should generally be responsible for carrier change charges associated with a negotiated sale or transfer. However, while we maintain this general rule rather than adopting either SBC's or Verizon's proposed modifications, we do adopt one minor modification to the rule for particular, limited circumstances. Specifically, when an acquiring carrier acquires customers by default—other than through bankruptcy—and state law would require the exiting carrier to pay these costs, we will require the exiting carrier to pay such costs to meet our streamlined slamming rules. The change in the rule does not impose any new or modified information collection requirements. The modification to rule 47 CFR 64.1120(e)(3)(iii) does not affect the existing annual hourly and cost changes.

OMB Control Number: 3060–0966.

Title: Sections 80.385, 80.475, and 90.303, Automated Marine Telecommunications Service (AMTS).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities, and Individuals or households.

Number of Respondents: 20.

Estimated Time per Response: 0.50 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 10 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: Yes.

Needs and Uses: The reporting and/or recordkeeping requirements are for both AMTS and amateur radio operators (or "ham operators"), who share AMTS spectrum. The Automated Maritime Telecommunications System (AMTS) is a specialized system of coast stations providing integrated and interconnected marine voice and data communications, somewhat like a cellular phone system for tugs, barges, and other vessels on these waterways. The amateur radio operators ("ham operators") use some of the same frequencies (219–220 MHz) as AMTS stations on a secondary, non-interference basis for digital message forwarding systems. The reporting requirements, as established in 47 CFR 80.383 and 97.303, require amateur radio licensees ("ham operators"), who participate in point-to-point fixed digital message forwarding systems, such as intercity packet backbone networks, and who operate within 398 miles (640 kms) of an AMTS coast station, to notify AMTS station licensees in writing. The amateur radio licensees must give: (1) Their station's specific geographic location for the transmission, and (2) their station's technical characteristics, including transmitter type, operating frequencies, emissions, transmitter output power, and antenna arrangement. This notification must be submitted at least 30 days prior to the initiation of the amateur radio licensee's operations in the 219–220 MHz. In addition, under 47 CFR 80.475, applicants and licensees of Automated Maritime Telecommunications System (AMTS) coast stations must notify two organizations—the American Radio Relay League (ARRL) and the Interactive Systems, Inc. (ISI), of the location of the AMTS fill-in stations. ARRL and Interactive Systems, Inc. maintain databases of AMTS locations for the benefit of amateur radio operators. These notification requirements insure that any amateur radio operator seeking to commence operations within close proximity of an AMTS station will not cause any interference to an AMTS licensee. Amateur radio licensees also must give the ARRL written notification of the geographic location of a station at least 30 days prior to transmitting in the 219–220 MHz band. As a "station in a secondary service," amateur stations must accept any harmful interference from AMTS operations. Furthermore, under 47 CFR 80.475, AMTS licensees are permitted to operate fill-in stations. While no prior FCC authorization is required to construct and operate an AMTS fill-in station, at the time the station is added, the AMTS licensee must make a record of the station's technical and administrative information, and upon request, supply such information to the FCC. The station must also send notification of the station's location to the ARRL and the ISI. In general, the notification process(es) functions without the FCC's direct involvement, except as required by 47 CFR 80.475, the AMTS station licensee must maintain a record of the station's technical and administrative functions and also provide a copy to the FCC upon request. The records of amateur radio operators include information about individuals or households, and the use(s) and disclosure of this information is governed by the requirements of a system of records, FCC/WTB–1, "Wireless Services Licensing Records." However, the FCC makes all information about amateur radio operators publicly available on its Universal Licensing System (ULS) Web page, except that the amateur operator's telephone number(s) and his/her e-mail address(es) are redacted. The public is entitled to download this public information, although ULS does not contain the locations of the amateur radio transmitters, information which amateur radio operators ("ham operators") have to provide to ARRL and to the AMTS licensees.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–18048 Filed 8–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

Type of Review: Renewal of a currently approved collection.

Title: Foreign Branching and Investment By Insured State Nonmember Banks.

OMB Number: 3064–0125.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Annual Burden: Estimated annual number of respondents, 61; Estimated time per response, 2 hours–400 hours; Total annual burden hours, 20,298 hours.

Expiration Date of OMB Clearance: October 31, 2004.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance (FDI) Act requires nonmember banks to obtain FDIC consent to establish or operate a branch in a foreign country, or to acquire and hold, directly or indirectly, stock or other evidences of ownership in any foreign bank or other entity. The FDI Act also authorizes the FDIC to impose conditions for such consent and to issue regulations related thereto. The information collection activities attributable to 12 CFR part 347 and part 303, subpart J are a direct consequence of these statutory requirements.

OMB Reviewer: Mark D. Menchik, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Leneta G. Gregorie, (202) 898–3719, Legal Division, Room MB–3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before September 7, 2004 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

Dated in Washington, DC, this 2nd day of August, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–17952 Filed 8–5–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–04–08]

Fiscal Year 2004 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications for the Aging Services Network Integrated Care Management Grants Program.

SUMMARY: The Administration on Aging announces that it will hold a competition under this program announcement for grant awards for up to twenty (20) projects varying in size up to $50,000 each. The approximate amount of federal funds available for these projects is $600,000 and the project period will be one year.

Legislative authority: The Older Americans Act, Public Law 106–501.

(Catalog of Federal Domestic Assistance 93.048, Title IV and Title II, Discretionary Projects).

Purpose of grant awards: The purpose of this grants program is to support the design, implementation, and dissemination of innovative models and approaches that demonstrate how Community Aging Services Providers (CASPs) and Area Agencies on Aging (AAAs) can either build capacity to adopt capitated financing approaches or, partner with Medicare and/or Medicaid managed care organizations, to improve the delivery of services that maximize the health and quality of life for older persons. The projects funded under this program should enhance the integration of health and social services and generate new knowledge and information that will help position the Aging Services Network in the evolving health and long term care environment. Recognizing that successful managed care models and approaches already exist in the Aging Services Network, this program will:

- Identify and document existing models or approaches that can be replicated by other aging services provider organizations, area agencies on aging, and/or managed care organizations (*Existing Practices*)
- Facilitate further refinements of existing models and approaches that are already in place (*Program Enhancements*);
- Support the design and/or implementation of new models or approaches that support the Aging Services Network's role in managed care (*New Models or Approaches*).

Consistent with these objectives, grants will be made in three (3) priority areas:

- *Existing Practices.* The grantee will develop detailed model replication materials for an existing successful project or approach that is consistent with the purposes of this program.
- *Program Enhancements.* The grantee will propose to build-upon and expand their existing model or approach in a way that broadens the scope and/or effectiveness of the program and/or gather data to assess the effectiveness of the program.
- *New Models or Approaches.* The grantee will propose to design and/or implement a new project consistent with the purposes of this program.

The awards will be cooperative agreements in which the grantee and the Administration on Aging work collaboratively to clarify the issues to be addressed by the project.

Awardee activities for this initiative are as follows:

a. Working collaboratively with AoA to refine and implement their project plan.

b. Working collaboratively with AoA, managed care organizations and other grantees under this initiative to refine concepts related to Aging Services Network opportunities concerning managed care. This collaboration will take the form of conference calls, web-based exchanges, on-site discussions, and national meetings.

c. Working collaboratively with AoA to develop and deliver dissemination and replication documents and presentations that are the critical products of these grants for Community Aging Services Provider organizations, Area Agencies on Aging and/or Medicare and/or Medicaid managed care organizations.

AoA activities for this initiative will include expert technical assistance and the coordination of mutual learning opportunities among AoA, grantees under this initiative, other federal agencies (CMS, NIH, CDC, AHRQ), foundations, and other national organizations and experts appropriate to this initiative. AoA activities will also include:

a. Working collaboratively with the grantee to refine project plans and resolve implementation issues.

b. Reviewing and commenting on dissemination and replication documents and presentations that are the critical products of the grants for Community Aging Services Provider organizations, Area Agencies on Aging, and/or Medicare and/or Medicaid managed care organizations.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to Community Aging Service Providers (CASPs) and Area Agencies on Aging (AAAs). A CASP is defined as a not-for-profit community-based organization that currently receives funding under the Older Americans Act and has a history and mission focused on the provision of home and community-based services, primarily for older people. Area Agencies on Aging are agencies officially designated as such by a State Unit on Aging under the provisions of the Older Americans Act. Faith-based organizations and Tribal organizations that fit the definition of a CASP or an AAA are encouraged to apply. An AAA can only apply as an AAA. Grantees are required to provide at least 25 percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award. No organization or agency may apply for more than one grant under this competition.

Executive Order 12372 is not applicable to these grant applications.

Screening criteria: All applications will be screened to assure a level playing field for all applicants. Applications that fail to meet the screening criteria described below will not be reviewed and will receive no further consideration:

1. *Postmark Requirements*—Applications must be postmarked by midnight of the deadline date indicated below, or hand-delivered by 5:30 p.m. Eastern Time on that date, or submitted electronically by midnight on that date.

2. *Organizational Eligibility*—Eligibility for grant awards is limited to Community Aging Service Providers (CASPs) and Area Agencies on Aging (AAAs).

3. *Responsiveness to Priority Area Description*—Applications will be screened on whether the application is responsive to the priority area description.

4. *Project Narrative*—The Project Narrative section of the application must not exceed 15 pages.

5. *Other Programmatic Requirements*—None.

Review of applications: Applications will be evaluated against the following criteria:

Purpose and Need for Assistance (25 points); Approach/Method—Workplan and Activities (25 points); Outcomes/Benefits/Impacts (20 points); and Level of Effort, Program Management, and Organizational Capacity (30 points).

DATES: The deadline date for the submission of applications is September 10, 2004.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Washington, DC 20201, by calling 202/357–3447, or online at *http://www.grants.gov.*

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA–04–08).

Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson (AoA–04–08).

If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants.

Instructions for electronic mailing of grant applications are available at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, D.C. 20201, Telephone: (202) 357–3440.

SUPPLEMENTARY INFORMATION: All grant applicants are required to obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *https://eupdate.dnb.com/requestoptions.html.*

Dated: August 2, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–17941 Filed 8–5–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delivery of Prevention of Mother to Child Transmission of HIV (PMTCT) Products in River State, Nigeria

Announcement Type: New.

Funding Opportunity Number: PA 04260.

Catalog of Federal Domestic Assistance Number: 93.941.

DATES: *Application Deadline:* September 7, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 242l and 247b(k)(2)] as amended and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Purpose: The purpose of the program is to improve the quality of life of people living with HIV/AIDS (PLWHAs) and their families. Nigeria has a population of 120 million and a current HIV sero-prevalence rate of 5.8 percent, thus making it the country with the largest number of HIV infected persons in Sub Saharan Africa (3.4 million HIV infected persons). As part of its response to the epidemic, the Government of Nigeria, in 2001, requested that the national Prevention of Mother to Child Transmission (PMTCT) task force team and the newly convened Antiretroviral (ARV) committee develop guidelines and protocols for implementing pilot PMTCT programs and ARV treatment and care programs respectively. The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 2005 funds for a cooperative agreement program to increase United States support to countries in which the CDC's Global AIDS Program (GAP) is operating. In coordination with host (or "in-country") GAP program staff, the applicant will assist in addressing the devastating impact of HIV/AIDS on individuals, families, and communities in Nigeria. The funded organization will provide technical assistance (TA) to implement, monitor, and evaluate the delivery of PMTCT products in River State, Nigeria, to reduce HIV transmission from mother to child and to prolong the lives of parents infected with HIV/AIDS.

The GAP has established field operations to support national HIV/AIDS control programs in 25 countries. The CDC's GAP exists to help prevent HIV infection, improve care and support, and build capacity to address the global AIDS pandemic. GAP provides financial and TA through partnerships with governments, community- and faith-based organizations, the private sector, and national and international entities working in the 25 resource-constrained countries. CDC/GAP works with the Health Resources and Services Administration (HRSA), the National Institutes of Health (NIH), the U.S. Agency for International Development (USAID), the Peace Corps, the Departments of State, Labor and Defense, and other agencies and organizations. These efforts complement multilateral efforts, including The Joint United Nations Programme on HIV/AIDS (UNAIDS), the Global Fund to Combat HIV, TB and Malaria, World Bank funding, and other private sector donation programs.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the President's Emergency Plan for AIDS Relief (PEPFAR). Through this new initiative, CDC's GAP will continue to work with host countries to strengthen capacity and expand activities in the areas of: (1) Primary HIV prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance and training. Targeted countries represent those with the most severe epidemics where the potential for impact is greatest and where U.S. government agencies are already active. Nigeria is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of assistance to Nigeria focuses on several areas of national priority including scaling up of prevention and care strategies for HIV prevention, care, and treatment.

The measurable outcomes of the program will be in alignment with goals of the National Center for HIV, STD and TB Prevention (NCHSTP) to reduce HIV transmission and improve care of PLWHAs. They also will contribute to the goals of the PEPFAR which are: (1) Within five years treat more than two million HIV-infected persons with effective combination anti-retroviral therapy (ART); (2) care for ten million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent seven million infections in 14 countries throughout the world.

Activities: The project sites for this cooperative agreement are:

1. College of Health Technology Clinic (PMTCT Implementation Center) and three affiliated satellite centers:
   - Civil Servants Hospital, Port Harcourt.
   - Comprehensive Health Center, Rumuigbo.
   - General Hospital, Okrika.
2. General Hospital Buguma (PMTCT Implementation Center) and three affiliate satellite centers:
   - General Hospital, Degema.
   - General Hospital, Abonnema.
   - General Hospital, Emohua.

Awardee activities for this program are as follows:

- Provide PMTCT Training of Trainers (TOTS) to at least 30 individuals, including health care workers, at the following locations:
  - PMTCT Implementation Centers (2): 10 trainees
  - Other Hospitals: 12 trainees
  - Contractor's Staff: 5 trainees
  - Non-Governmental Organizations/ Community Based Organizations/ Reproductive Health Services Outlets (NGO/CBO/RHSO) Faith-based organizations: 3 trainees
  - Total TOT Trainees: 30 trainees
- The beneficiaries of the Training of Trainers will provide training to other health care workers, from their respective institutions:
  - PMTCT Implementation Centers (2) × 10: 20
  - Contractor's Staff Capacity Building Training Workshop (training of NGOs/CBOs/RHSOs): 30
  - Total Health Care Workers Trained: 50
- Increase awareness of HIV/AIDS and PMTCT through posters, radio jingles, counseling services and other media. The grantee is expected to make 30,000 persons aware of HIV/AIDS and PMTCT.
- Provide PMTCT counseling services (both group and one-on-one counseling services) to 20,000 pregnant women within 12 months from all participating PMTCT health centers and satellites under this initiative in Rivers State.
- Provide PMTCT counseling and Management of HIV/AIDS to 1,000 pregnant women who have tested positive for HIV/AIDS within 12 months from all participating PMTCT health centers and satellites under this initiative in Rivers State.
- Provide Voluntary HIV testing to 50 percent or 10,000 of counseled PMTCT pregnant women within the 12-month period. The distribution should be 6,000 tested in Port Harcourt and 4,000 tested in Buguma.
- Provide PMTCT services to 1,000 pregnant women testing positive for HIV/AIDS.
- Provide ARV treatment and management of 100 pregnant HIV infected women with symptoms/ diagnosis of AIDS.
- Provide Nevirapine treatment (200 mg) to 1,000 pregnant HIV infected women at the onset of labor and continue treatment for the duration of ten months.
- Provide Nevirapine treatment (syrup 2 mg/kg) to 1,000 infants within 24–72 hours of birth.
- Provide Breast Milk Supplement (BMS) to 100 HIV infected mothers opting not to breast feed their babies within the first six months of delivery.
- Test 1,000 infants for HIV at age 15 months.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Collaborate with the award recipient, the Nigerian Ministry of Health (MOH) and other in-country and international partners in the development of plans for program assistance based on the country needs, the CDC TA portfolio, and HIV prevention activities conducted by other partners.
- Provide consultation, scientific and technical assistance based on the "CDC GAP Technical Strategies" document to promote the use of best practices known at the time.
- Facilitate in-country planning and review meetings for the purpose of ensuring coordination of country-based program TA activities. CDC will act as liaison and assist in coordinating activities as required between the applicant and other NGOs, government of Nigeria agencies, and other CDC, GAP partners.

TA and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $200,000.

Approximate Number of Awards: One.

Approximate Average Award: $200,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Private nonprofit organizations.
- Community-based organizations.
- Faith-based organizations.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. Applicants must:

1. Have experience in community HIV/AIDS programs in the Niger Delta Region of Nigeria.
2. Have at least three years experience working in the Niger Delta Region of Nigeria relative to development assistance.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25 If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Double spaced.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Plan.
- Objectives.
- Activities.
- Methods of Monitoring the Project.
- Methods of Project Evaluation.
- Summary budget by line item along with a budget justification.

The budget justification will not be counted in the page limit stated above.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Organizational Chart.
- Curriculum Vitae/Resumes of Current Staff.
- Proposed staffing pattern (include qualifications) required to carry out program activities.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date:
September 7, 2004.

Explanation of Deadlines:
Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Antiretroviral Drugs—The purchase of ARVs, reagents, and laboratory equipment for ARV treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to

endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. Government funds in connection with this document.

The following definitions apply for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).
- A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. Restoration of the Mexico City Policy, 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. Government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

- Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04260, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Ability to Carry Out the Project (25 Points)

Does the applicant document demonstrated capability to achieve the purpose of the project?

2. Understanding of the Problem (20 Points)

Does the applicant demonstrate a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement? Does the proposal specifically include a description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects?

3. Technical Approach (20 Points)

Does the applicant's proposal include an overall design strategy, including measurable time lines? Does the proposal address regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives?

4. Personnel (20 Points)

Are the professional personnel involved in this project qualified, including evidence of experience in working with PMTCT, voluntary counseling and testing (VCT), and HIV/AIDS?

5. Plans for Administration and Management of Projects (15 Points)

Are there adequate plans for administering the project?

6. Budget (Not Scored)

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCHSTP/GAP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–6 Patient Care.
- AR–9 Paperwork Reduction Act Requirements.
- AR–14 Accounting System Requirements.

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports in English:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2700.

For program technical assistance, contact: Wayne Duncan, Country Director, CDC Global AIDS Program—Nigeria, Metro Plaza, Zakariya Maimalari Street, Plot 992, Central Business District, Abuja, Nigeria, telephone: 234–09–670–0798. e-mail: *wcd2@cdc.gov.*

For financial, grants management, or budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2072. e-mail: *dmf6@cdc.gov.*

VIII. Other Information

None.

Alan A. Kotch,

Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–18099 Filed 8–4–04; 10:33 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 8, 2004, from 8 a.m. to 5 p.m.

Location: On September 8, 2004, the meeting will be held at the Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *spelllesaned@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 8, 2004, the committee will discuss the FDA draft guidance document entitled "Guidance for the Clinical Evaluation of Weight-Control Drugs," issued September 24, 1996 (see 69 FR 3588, January 26, 2004, including solicitation for comments [Docket No. 2003D–0570], see also the FDA Internet at *http://www.fda.gov.cder/guidance/index.htm* under the heading "Clinical/Medical (Draft)").

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 31, 2004. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 31, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dornette Spell-LeSane, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 30, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–17949 Filed 8–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB approval; application to extend/change Nonimmigrant Status, Form I–539, (OMB No. 1615–0003).

The Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (CIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 5, 2004.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption 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:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–539, Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information collected is required by 8 CFR part 214. This form will be used by nonimmigrants to apply for an extension of stay or for a change to another nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 261,867 responses at 45 minutes (.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 196,400 annual burden hours.

In additional information is required contact: Mr. Richard A. Sloan, Director, Regulations and Forms Services, Bureau of Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536.

Dated: August 2, 2004.

Stephen Tarragon,

Deputy Department Clearance Officer, Department of Homeland Security.

[FR Doc. 04–17948 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2319–04]

Extension of the Designation of Temporary Protected Status for Somalia

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: The Temporary Protected Status (TPS) designation for Somalia will expire on September 17, 2004. This notice extends the Secretary of Homeland Security's designation of Somalia for 12 months until September 17, 2005, and sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on September 16, 1991) and also timely re-registered under each subsequent extension of the designation, or who registered under the re-designation (which was announced on September 4, 2001) and also timely re-registered under each extension of the re-designation. Certain nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Somalia's TPS designation is effective September 17, 2004, and will remain in effect until September 17, 2005. The 60-day re-registration period begins August 6, 2004, and will remain in effect until October 5, 2004.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Ullico Building, 3rd Floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of TPS for Somalia?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice (DOJ) to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering TPS held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer

meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General published a notice in the **Federal Register** at 56 FR 46804 designating TPS for Somalia. The Attorney General extended this TPS designation annually, determining in each instance that the conditions warranting such designation continued to be met. The Attorney General extended and re-designated TPS for Somalia by publishing a notice in the **Federal Register** on September 4, 2001, at 66 FR 46288, based upon extraordinary and temporary conditions resulting from the armed conflict and lack of functioning state institutions. The last extension of TPS for Somalia by the Attorney General was published in the **Federal Register** on July 26, 2002, at 67 FR 48950.

After the transfer of functions and authority from the Service and DOJ to BCIS and DHS, DHS extended TPS for Somalia by Notice published in the **Federal Register** on July 21, 2003, at 68 FR 43147. This extension expires on September 17, 2004.

Since the date of the most recent extension, DHS and the Department of State (DOS) have continued to review conditions in Somalia. It is determined that a 12-month extension is warranted because the extraordinary and temporary conditions that prompted designation persist. Further, it is determined that it is not contrary to the national interest of the United States to permit nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who otherwise qualify for TPS to remain temporarily in the United States. 8 U.S.C. 1254a(b)(1)(C).

DOS observes that more than nine years after the withdrawal of the United Nations Operation in Somalia and thirteen years after the fall of Mohammed Siad Barre's regime, Somalia still lacks a central government. The mandate of the Transitional National Government for Somalia (TNG) expired in August 2003. In October 2002, the Inter-Governmental Authority (IGAD) was established, but has failed to produce a Somali central government. (DOS Recommendation (May 13, 2004)). The BCIS Resource Information Center (RIC) notes that the third and final phase of the peace talks did not fully start as scheduled on May 6, 2004 due to disagreements among delegates over a power-sharing formula. (RIC Report (May 11, 2004)). In January 2004 Somali leaders signed an agreement to establish a new Federal Transitional Parliament. Several faction leaders have since retracted their support for the agreement. (DOS Recommendation (May 13, 2004)).

Fighting has continued throughout the country, particularly in Mogadishu, Las Anod and Baidoa, as well as in the Bari, Bay, Bakol, Gedo, Lower Shabelle, Middle Shabelle, and Middle Juba regions. Inter-clan fighting throughout the country continues to increase. *Id.* The BCIS RIC notes that, although most of the armed conflict has been confined to the central and southern part of Somalia, tensions have arisen between the self-declared republic of Somaliland and the self-declared autonomous region of Puntland over the disputed regions of Sool and Sanaag. (RIC Report (May 11, 2004)). The increasing instability in Puntland caused many international humanitarian organizations to withdraw international staff from the region. (DOS Recommendation (May 13, 2004)).

The BCIS RIC reports a continued complex emergency situation in Somalia. Increasing conflict in the north is disrupting agricultural activity and further limiting access to health and social services. A number of Somalis are threatened by the drought in the northern and central regions of the country. (RIC Report (May 11, 2004)). The Sool Plateau in the north and the regions of Togdheer, Lowere Nugal and the central area face extreme food shortages due to a drought. *Id.* Additionally, Somalia currently lacks the institutions to address the demands of a large volume of returnees from the United States. (DOS Recommendation (May 13, 2004)).

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Somalia for TPS continue to be met. 8 U.S.C. 1254a(b)(3). There are extraordinary and temporary conditions in Somalia such that it is not prudent to return nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) if these aliens meet the other statutory requirements for TPS. The Secretary of DHS also finds that permitting nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who meet the eligibility requirements of TPS to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1)(C). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Somalia should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Somalia TPS Designation, Do I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Somalia TPS designation, your benefits will expire on September 17, 2004. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through September 17, 2005. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Somalia designation who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and seventy five dollar ($175) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the seventy-dollar ($70) biometric services fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the seventy dollar ($70) biometric services fee with the application for extension.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins August 6, 2004, and ends October 5, 2004.

If	Then
You are applying for employment authorization until September 17, 2005.	You must complete and file the Form I–765, Application for Employment Authorization, with the $175 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $175 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect my Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii). Also, a person convicted of any felony or two misdemeanors committed in the United States is not eligible for TPS. 8 U.S.C. 1245a(c)(2)(B)(i).

Can I Apply for Another Immigration Benefit While Registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status or from filing for adjustment of status based on an immigrant petition. 8 U.S.C. 1254a(a)(5). TPS alone, however, does not lead to adjustment of status. 8 U.S.C. 1254a(f)(1). For the purposes of change of status and adjustment of status, a registered TPS beneficiary is considered as being in and maintaining lawful status as a nonimmigrant. 8 U.S.C. 1254a(f)(4).

Does This Extension Allow Nationals of Somalia (or Aliens Having No Nationality Who Last Habitually Resided in Somalia) Who Entered the United States After September 4, 2001, To File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of TPS for Somalia. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those beyond the current TPS eligibility requirements of Somalia. To be eligible for benefits under this extension, nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) must have been continuously physically present and continuously resided in the United States since September 4, 2001, the date of the last re-designation of TPS for Somalia.

What is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A), 8 U.S.C. 1254a(c)(2), and 8 CFR 244.2. To apply for late initial registration an applicant must:

(1) Be a national of Somalia (or alien who has no nationality and who last habitually resided in Somalia);

(2) Have been continuously physically present in the United States since September 4, 2001;

(3) Have continuously resided in the United States since September 4, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the initial designation (from September 16, 1991 to September 16, 1992), or during the registration period for the re-designation (from September 4, 2001 to September 17, 2002), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When this Extension of TPS Expires on September 17, 2005?

At least 60 days before this extension of TPS expires on September 17, 2005, the Secretary of DHS will review conditions in Somalia and determine whether the conditions for TPS designation continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of TPS for Somalia

By the authority vested in DHS under sections 244(b)(1)(C), (b)(3)(A), and (b)(3)(C) of the Act, DHS has consulted with the appropriate government agencies and determined that the conditions that prompted designation of Somalia for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, DHS orders as follows:

(1) The designation of Somalia under section 244(b)(1)(C) of the Act is extended for an additional 12-month period from September 17, 2004, to September 17, 2005. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 324 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who was granted TPS during the initial designation period or re-designation period must re-register

for TPS during the 60-day re-registration period from August 6, 2004, until October 5, 2004.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing a Form I–821 for re-registration. If the applicant requests employment authorization, he or she must submit one hundred and seventy five dollars ($175) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The seventy-dollar ($70) biometric services fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 U.S.C. 1254a(c)(3)(C). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on September 17, 2005, the Secretary will review the designation of Somalia for TPS and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Somalia for TPS will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://uscis.gov*.

Dated: July 19, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–18005 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2004–17572]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Number 1625–NEW [Formerly 2115–0009]

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR), Standard Numbering System for Undocumented Vessels, to the Office of Information and Regulatory Affairs (OIRA) of the OMB for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Document Management Facility on or before September 7, 2004.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2004–17572] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2298 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available for inspection and copying in public docket USCG 2004–17572 at the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the Internet at *http://dms.dot.gov;* and for inspection from the Commandant (CG–611), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, 202–267–2326, for questions on this document; Ms. Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's "Privacy Act Policy" below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG 2004–17572], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a

stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published the 60-day notice required by OIRA (69 FR 20946, April 19, 2004). That notice elicited two comments.

One comment, from a non-profit organization that operates a sailing program for children, objected to the provision in the Standard Numbering System (SNS) regulations that allows States, at their discretion, to require non-motorized vessels to be numbered. This is not a new provision in the law; it has been in place for several decades. The State in which the commenter resides does not require non-motorized vessels to be numbered, and is not likely to change its laws to do so based simply on publication of an information collection notice. We do not plan to amend the proposal.

The second comment, from a national organization representing the State boating programs responsible for implementing the SNS regulations in their States, supported the notice.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2004–17572 comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

Title: Standard Numbering System for Undocumented Vessels.

OMB Control Number: 1625–NEW.

Type of Request: Existing collection in use without an OMB control number.

Affected Public: Owners of all undocumented vessels propelled by machinery are required by Federal law to apply for a number from the issuing authority of the State in which the vessel is to be principally operated. In addition, States may require other vessels, such as sailboats or even canoes and kayaks, to be numbered. "Owners" may include individuals or households, non-profit organizations, and small businesses (*e.g.*, liveries that offer recreational vessels for rental by the public) or other for-profit organizations.

Form: None.

Abstract: Subsection 12301(a) of Title 46, United States Code, requires undocumented vessels equipped with propulsion machinery of any kind to be numbered in the State where the vessel is principally operated. In 46 U.S.C. 12302(a), Congress authorized the Secretary to prescribe, by regulation, a Standard Numbering System (SNS). The Secretary shall approve a State numbering system if that system is consistent with the SNS. The Secretary has delegated his authority under 46 U.S.C. 12301 and 12302 to the Commandant of the U.S. Coast Guard. DHS Delegation No. 0170.1 applies. The regulations requiring the numbering of undocumented vessels are in 33 CFR part 173, and regulations establishing the SNS for States to voluntarily carry out this function are contained in part 174.

In States that do not have an approved system, the Federal Government (U.S. Coast Guard) must administer the vessel numbering system. Currently, all 56 States and Territories have approved numbering systems. The approximate number of undocumented vessels registered by the States in 2002 was nearly 13 million.

The SNS collects information on undocumented vessels and vessel owners. States submit reports annually to the Coast Guard on the number, size, construction, etc., of vessels they have numbered. That information is used by the Coast Guard—

(1) In publication of an annual "Boating Statistics" report required by 46 U.S.C. 6102(b), and

(2) For allocation of Federal funds to assist States in carrying out the Recreational Boating Safety (RBS) Program established by 46 U.S.C. Chapter 131.

On a daily basis or as warranted, Federal, State, and local law enforcement personnel use SNS information from the States' numbering systems for enforcement of boating laws or theft and fraud investigations. In addition, when encountering a vessel suspected of illegal activity, information from the SNS increases officer safety by assisting boarding officers in determining how best to approach a vessel. Although the statutory requirement for numbering of vessels dates back to 1918, the September 11, 2001 terrorist attacks on the United States has increased the need for identification of undocumented vessels and their owners for port security and other missions to safeguard the homeland.

Respondents: Owners of all undocumented vessels propelled by machinery. "Owners" may include individuals or households, non-profit organizations, and small businesses (*e.g.*, liveries that offer recreational vessels for rental by the public) or other for-profit organizations.

Burden: The estimated burden is 15,507 hours a year.

Dated: July 30, 2004.

Clifford I. Pearson,

Assistant Commandant for C4 and Information Technology.

[FR Doc. 04–18018 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Committee management: Notice of committee establishment.

SUMMARY: The Secretary of the Department of Homeland Security has determined that the establishment of the National Fire Academy Board of Visitors is necessary and in the public interest in connection with the performance of duties of the Under Secretary of the Emergency Preparedness and Response Directorate. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: National Fire Academy Board of Visitors.

Purpose and Objectives: The Committee advises the Secretary of the Department of Homeland Security and the Under Secretary of the Emergency Preparedness and Response Directorate.

The Board shall review annually the programs of the Academy and advise the Under Secretary through the U.S. Fire Administrator regarding the operation of the Academy and any improvements therein that the Board deems appropriate. The Board shall make interim advisories to the Under Secretary through the U.S. Fire Administrator whenever there is an indicated urgency to do so in fulfilling its duties.

1. In carrying out their responsibilities, the Board shall include in their review:

a. An examination of Academy programs to determine whether these programs further the basic missions which are approved by the Under Secretary;

b. An examination of the physical plant of the Academy to determine the adequacy of the Academy facilities; and,

c. An examination of the funding levels for the Academy programs.

2. The Board shall submit its annual report through the U.S. Fire Administrator to the Under Secretary, in writing, within thirty (30) days following its meeting. This report shall provide detailed comments and recommendations regarding the operation of the Academy. The Board shall submit interim reports through the U.S. Fire Administrator to the Under Secretary whenever there is an indicated need to do so in the fulfillment of its duties.

Balanced Membership Plans: The Committee shall be comprised of eight members. The Secretary shall appoint the members of the Board from among professionals in the fields of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management, and from such professional organizations as will ensure a balanced representation of fire and emergency services interests. Members will be appointed as Special Government Employees (SGEs). Members of the Board shall be appointed for terms of up to three (3) years, and members may be reappointed to three subsequent 3-year terms at the discretion of the Secretary. Board members will continue to serve until their replacement is appointed. In the event of a vacancy on the Board, the Secretary may select an alternate member or other individual to serve the unexpired term as described in the appointment letter. In order to provide for continuity of member participation, terms are staggered. No more than half of the members shall be replaced (or reappointed) in any given year unless there are vacancies for reasons other than term expiration.

Duration: Continuing.

Responsible DHS Official: Mr. R. David Paulison, U.S. Fire Administrator, 16825 South Seton Avenue, Emmitsburg, MD 21727.

Dated: July 30, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17969 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1528–DR]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1528–DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 2004:

Benton and Franklin Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17968 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1529–DR]

California; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–1529-DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: July 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 2004:

All counties in the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17967 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1530–DR]

New Jersey; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–1530–DR), dated July 16, 2004, and related determinations.

EFFECTIVE DATE: July 23, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 23, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17965 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1530–DR]

New Jersey; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–1530–DR), dated July 16, 2004, and related determinations.

EFFECTIVE DATE: July 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 16, 2004:

All counties in the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17966 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1531–DR]

South Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1531–DR), dated July 20, 2004, and related determinations.

EFFECTIVE DATE: July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 20, 2004:

Yankton County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17964 Filed 8–5–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–20]

Notice of Proposed Information Collection for Public Comment; Customer Service and Satisfaction Survey, Resident Assessment Subsystem (RASS)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* October 5, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Sherry Forbear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Customer Service and Satisfaction Survey, Resident Assessment Subsystem.

OMB Control Number: 2507–0001.

Description of the need for the information and proposed use: The Customer Service and Satisfaction Survey is the instrument that HUD uses to survey residents residing in assisted and insured housing. The survey assesses residents' satisfaction with housing services and living conditions. HUD conducts a Customer Service and Satisfaction survey of assisted and insured housing residents annually. A random sample of residents is taken within each public housing agency and surveyed on an annual basis in accordance with Public Housing Assessment System (PHAS) requirements and regulation. PHAs are required to announce the survey and follow-up on substandard scores. Approximately twenty percent of multifamily residents are surveyed annually from a stratified sample of selected properties. No implementation or follow-up is required for multifamily properties.

Agency form number, if applicable: Not applicable.

Members of affected public: Public housing agencies and multi-family owners.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 580,797 residents receive the survey, 3170 PHAs submit implementation and follow-up plans, HUD receives a total of 216,979 responses from residents and PHAs (total based on 37% response rate for survey); annual submission per resident respondents and PHAs; average hours for resident response is 15 minutes; average hours for PHA response is 5.45 hours; the total reporting burden is 64,021 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 30, 2004.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–17944 Filed 8–5–04; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–61]

Notice of Submission of Proposed Information Collection to OMB; Home Equity Conversion Mortgage (HECM) Insurance Application for Reverse Mortgages and Related Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to collect information relating to reverse mortgage applications and related documents are used to determine the eligibility of the borrower and proposed mortgage transaction for FHA insurance endorsement. This submission is a consolidation of additional consumer notification requirements formerly approved under 2502–0534 and 2502–0546.

DATES: *Comments Due Date:* September 7, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0524) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This notice is soliciting comments from members of the public and affecting agencies concerning the

proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Home Equity Conversion Mortgage (HECM) Insurance Application for Reverse Mortgages and Related Documents.

OMB Approval Number: 2502–0524.

Form Numbers: Fannie Mae Form 1009, HUD Form 92901, HUD Form 92902.

Description of the Need for the Information and Its Proposed Use: The HECM reverse mortgage applications and related documents are used to determine the eligibility of the borrower and proposed mortgage transaction for FHA insurance endorsement. This submission is a consolidation of additional consumer notification requirements formerly approved under 2502–0534 and 2502–0546.

Frequency of Submission: On occasion, at sale or transfer.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	17,000	102,000		0.36		39,950

Total Estimated Burden Hours: 39,950.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–17945 Filed 8–5–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–60]

Notice of Submission of Proposed Information Collection to OMB; Mortgage Record Change

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting continued approval to collect Mortgage Record Change information to comply with HUD requirements for reporting the sale of a mortgage between investors and/or the transfer of the mortgage servicing responsibility, as appropriate.

DATES: *Comments Due Date:* September 7, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0422) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgage Record Change.

OMB Approval Number: 2502–0422.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The Mortgage Record Change information is used by FHA-approved mortgages to comply with HUD requirements for reporting the sale of a mortgage between investors and/or the transfer of the mortgage servicing responsibility, as appropriate.

Frequency of Submission: On occasion, at sale or transfer.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	6,000	467		0.1		280,000

Total Estimated Burden Hours: 280,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–17946 Filed 8–5–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–62]

Notice of Submission of Proposed Information Collection to OMB; Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information is distributed to tenants of assisted rental housing units detailing guidelines for pet ownership. The information is necessary because no owner of federally assisted rent housing for the elderly or handicapped may prohibit a tenant from having common household pets in the tenant's dwelling unit, or discriminate against any person regarding admission to such Housing because of ownership or presence of a pet in the person's dwelling unit.

DATES: *Comments Due Date:* September 7, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0342) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped.

OMB Approval Number: 2502–0342.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Information is distributed to tenants of assisted rental housing units detailing guidelines for pet ownership. The information is necessary because no owner of federally assisted rental housing for the elderly or handicapped may prohibit a tenant from having common household pets in the tenant's dwelling unit, or discriminate against any person regarding admission to such housing because of ownership or presence of a pet in the person's dwelling unit.

Frequency of Submission: On occasion, information is distributed at initial tenancy and/or if pet rules are revised.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,793	14.05		0.231		28,671

Total Estimated Burden Hours: 28,671.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–17947 Filed 8–5–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–32]

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.

DATES: Effective August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, 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: July 29, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–17678 Filed 8–5–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4943–N–01]

Notice of Draft Report of the U.S. Department of Housing and Urban Development Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code Accessibility Provisions and Solicitation of Comments

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and solicitation of comments.

SUMMARY: The United States Department of Housing and Urban Development (HUD or the Department) announces a draft report of its review of the Fair Housing Act's accessibility requirements in the 2003 International Building Code.[1] The Department conducted this review in response to a request from the International Code Council (ICC). The draft report identifies the variances between the Fair Housing Act's design and construction requirements and the 2003 International Building Code.

The draft report discusses only variances that may not meet the Fair Housing Act's design and construction requirements. As stated in the **SUPPLEMENTARY INFORMATION** section of this notice, the draft report is a precursor to a final report that HUD will publish in the **Federal Register**. After receipt and review of public comments, the Department will make its final revisions to the draft report and then issue the final report.

DATES: *Comments Due Date:* September 7, 2004.

Submission of Comments & Addresses: Interested persons are invited to submit comments regarding the issues discussed in this draft report. Written comments should be submitted to Surrell Silverman, Reports Liaison Officer, Office of Fair Housing and Equal Opportunity at 451 Seventh Street, SW., Room 5124, Washington, DC 20410–0500. Telephone number (202) 708–4150. Written comments must be submitted by close of business (6 p.m. EDT).

Location of Documents: The HUD draft report is located at [*http://www.hud.gov/offices/fheo/disabilities/modelcodes/*]. The Fair Housing Act, the Fair Housing Act regulations, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this Web site. The report is designed primarily to provide technical assistance in response to the request the Department received from ICC and thus, because the report is responding to code language, it may be using terms unfamiliar to the general public. The Department has arranged to have all of the source documents that the Department used in the analysis available to the public during the period of this request for public comments. The source documents that the Department reviewed are available at *http://fairhousing.iccsafe.org/nt_2000*. ICC has agreed to provide free of charge access to the chapters of the 2003 IBC that the Department reviewed. The 1998 edition of the American National Standards Institute (ANSI) A117.1 standard, "Accessible and Usable Buildings and Facilities," is available for purchase at that Web address.

Copies of all the relevant documents are also available for viewing at the HUD Library at 451 Seventh St., SW., Washington, DC 20410. To gain admission to the HUD Library you must present identification to the security guards and ask to visit the library. Photocopying in the HUD library is limited to 40 pages. With the exception of the HUD draft report, all of the source documents are copyrighted and therefore not available for photocopying.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410–0500; telephone (202) 708–2333, extension 7058 (voice). (This is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8399 (TTY).

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended (commonly known as the Fair Housing Act), 42 U.S.C. 3601 *et seq.*, makes it unlawful to discriminate in any aspect relating to the sale or rental of dwellings, in the availability of residential real estate-related transactions, or in the provision of services and facilities in connection therewith because of race, color, religion, sex, disability (handicap),[2] familial status, or national origin.

The Fair Housing Act (the Act) and the Department's implementing regulations provide that discrimination includes the failure to design and construct covered multifamily dwellings built for first occupancy after March 13, 1991 to include certain features of accessible and adaptable design. Covered multifamily dwellings are "buildings consisting of 4 or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more units." 42 U.S.C. 3604(f)(7). The Act's requirements apply irrespective of type of ownership, covering both rental and for sale units, as long as there are four or more units in the building. Covered multifamily dwellings must be designed and constructed so that: (1) The public and common use portions of such dwellings are readily accessible to and usable by persons with disabilities; (2) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and (3) All premises within such dwellings contain the following features of adaptive design: (a) An accessible route into and through the dwelling; (b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) Reinforcements in bathroom walls to allow later installation of grab bars; and (d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604(f)(3)(C). These basic accessibility requirements are known as the Act's design and construction requirements.

The Act does not set forth specific technical design criteria that have to be followed in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the American National Standard Institute for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People,

[1] The 2003 International Building Code © is a copyrighted work owned by the International Code Council, Inc.

[2] The Fair Housing Act refers to people with "handicaps." Subsequently, in the Americans with Disabilities Act of 1990 and other legislation. Congress adopted the term "persons with disabilities," or "disability," which is the preferred usage.

commonly referred to as ANSI A117.1, satisfies the Act's design and construction requirements for the interiors of dwelling units. 42 U.S.C. 3604(f)(4).

The Act states that Congress did not intend the Department to require states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings. 42 U.S.C. Sec. 3604(f)(5)(C). However, Congress authorized the Department to encourage the inclusion of these requirements into their state and local procedures. Id. In addition, Congress directed the Secretary of HUD to "provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements]."

ICC requested that the Department determine whether the accessibility provisions of the 2003 International Building Code meet the accessibility requirements of the Act, the Department's regulations implementing the 1988 Amendments to the Act, and the Fair Housing Accessibility Guidelines (the Guidelines). The Department believes such reviews fall under its authority to provide technical assistance under the Act. The purpose of the Department's draft report is to present the results of and seek public comment on the Department's review of certain accessibility provisions of the 2003 International Building Code ("2003 IBC"), published by ICC.

The Department is not promulgating any new technical requirements or standards by way of this draft report. This draft report and the final report will serve solely to respond to ICC's request for technical assistance and to provide technical assistance to other interested parties. This request for comment on the draft report is not a solicitation for changes to the design and construction requirements of the Act, the Department's implementing regulations, or the Guidelines.

Prior to finalizing this report, the Department seeks public comment on the identification of variances and the recommendations contained in the draft report. Department staff have carefully reviewed and commented on the draft report and would like to hear from persons with disabilities, organizations representing persons with disabilities, code officials, home builders, and other interested parties prior to finalizing the report.

The draft report focuses only on the areas where the 2003 IBC does not meet the requirements of the Act, the Department's regulations implementing the Act, the Guidelines, or ICC/ANSI A117.1–1998. If a particular provision of a code is not discussed, then the reader should presume that the position of the Department is that the provision meets the requirements of the Act even if the wording of the code provision and the Act's requirements are not identical.

The Department will consider all comments received by close of business (6:00 p.m. EDT) on September 7, 2004 and will then publish its final report in the **Federal Register**.

Dated: July 30, 2004.

Carolyn Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 04–17942 Filed 8–5–04; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Fish and Wildlife Service Employee Exit Follow-Up Survey (1018–0112)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Fish and Wildlife Service (we/our) will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before October 5, 2004.

ADDRESSES: Send your comments on the requirement to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; *Hope_Grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Hope Grey at (703) 358–2482 or e-mail *Hope_Grey@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew approval of the collection of information for the Employee Exit Follow-Up Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies 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 number for this collection of information is 1018–0112.

The Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people. We manage the 95-million-acre National Wildlife Refuge System, which encompasses 542 national wildlife refuges, thousands of small wetlands and other special management areas. We also operate 69 national fish hatcheries, 64 fishery resource offices, and 81 ecological services field stations. We enforce Federal wildlife laws, administer the Endangered Species Act, manage migratory bird populations, restore nationally significant fisheries, conserve and restore wildlife habitat such as wetlands, and help foreign governments with their conservation efforts. We also oversee the Federal Assistance program that distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to State fish and wildlife agencies. We have made it a high priority to recruit and retain valued employees to accomplish these responsibilities. As part of an active career development program, we have instituted an Employee Exit Follow-Up survey to collect feedback from former Fish and Wildlife Service employees so that we may discover relevant issues that impact retention. If this survey were not used, there would be no way we could analyze the reasons for employee separation.

During the past three years that we have used this survey, we received comments from several respondents. These comments ranged from gratitude that we collect this information to skepticism that the survey would result in any workplace changes. There were three comments that addressed specific aspects of the survey. The first commenter noted that questions 12, 16, 17, and 18 were particularly difficult to

answer. The second commenter expressed concern that, because the survey required the respondent's job title and Region, anyone looking at the completed survey would know who had written it. The third commenter raised the issue that the survey questions did not adequately capture the problems that would cause an office to have a high attrition rate. We have not made any changes to the survey in response to these comments. Regarding the first commenter's suggestion, the commenter found the questions difficult because of feelings towards the organization's management, not because of the questions themselves. The second commenter's concern did not result in a change to the survey question because the reported results are aggregated and not personally identifiable. Finally, regarding the third comment, the reported results are giving us valuable insight into the reasons why employees are separating from the Fish and Wildlife Service.

Title of Collection: Employee Exit Follow-Up Survey, authorized by the Merit System Principles (5 U.S.C. 2301).

OMB Control Number: 1018–0112.

Form Number: FWS 3–2186.

Frequency of Collection: Annually.

Description of Respondents: Former Fish and Wildlife Service employees.

Total Annual Burden Hours: 100 hours. The reporting burden is estimated to average 15 minutes per respondent.

Total Annual Responses: About 400 individuals are expected to participate in the survey annually.

We invite comments concerning this submission on: (1) Whether or not the collection of information is necessary for the proper performance of our career development functions, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: July 30, 2004.

Hope Grey,

Service Information Collection Clearance Officer.

[FR Doc. 04–17957 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Scaleshell Mussel (*Leptodea leptodon*) Draft Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of the draft recovery plan for the scaleshell mussel (*Leptodea leptodon*), a species that is federally listed as endangered under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et. seq.*). The purpose of this plan is to recover this species in order that it can be removed from the list of Threatened and Endangered Species. Currently, only 14 rivers support very small populations in Arkansas, Missouri, and Oklahoma. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 7, 2004.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 608 E. Cherry St., Room 200, Columbia, Missouri 65201–7712 (telephone (573) 876–1911) or by accessing the Web site: *http://midwest.fws.gov/Endangered.*

FOR FURTHER INFORMATION CONTACT: Mr. Andy Roberts at the above address and telephone (ext. 110). TTY users may contact Mr. Roberts through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

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 Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally listed threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for reclassification and delisting, and provide estimates of the time and costs for implementing the recovery measures needed.

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, as amended in 1988, requires public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

The scaleshell was listed as endangered on October 9, 2001. It once occurred in 55 rivers across 13 states in the Mississippi River drainage. The species has undergone a dramatic reduction in range and has further declined in the last few decades. Currently, only 14 rivers support very small populations in Arkansas, Missouri, and Oklahoma. The scaleshell occurs in medium to large rivers with low to medium gradients. It primarily inhabits gravel or mud substrate in stable riffles and runs with moderate current velocity. The scaleshell requires good water quality and is usually found where a diversity of other mussel species are concentrated. More specific habitat requirements of scaleshell are unknown, particularly habitat requirements of the juvenile stage. Water quality degradation, sedimentation, channel instability, and habitat destruction are contributing to the decline of the scaleshell throughout its range.

The scaleshell will be considered for downlisting to threatened status when the likelihood of the species becoming extinct in the foreseeable future has been eliminated by the achievement of the following criteria: (1) Through protection of existing populations, successful establishment of reintroduced populations, or discovery of additional populations, four stream populations exist, each in a separate watershed and each made up of at least four local populations that are located in distinct areas of the stream; (2) all local populations are persistent and viable in terms of population size, age structure, and recruitment; (3) each local population and their habitat are sufficiently protected from any present and foreseeable threats that would jeopardize their continued existence; (4) tasks will be completed to determine if water quality criteria should be included as a delisting criteria and, if so, water quality criteria for delisting will be developed; and (5) measures are in place to prevent the spread of zebra mussels into habitat occupied by the

scaleshell where zebra mussels have not become established.

The scaleshell will be considered for delisting when the likelihood of the species becoming threatened in the foreseeable future has been eliminated by the achievement of the following criteria: (1) Through protection of existing populations, successful establishment of reintroduced populations, or discovery of additional populations, a total of eight stream populations exist in separate watersheds, one located in the Upper Mississippi Basin, four in the Middle Mississippi River Basin (including two east of the Mississippi River), and three in the Lower Mississippi River Basin, and each of these is made up of four local and geographically distinct populations; (2) all local populations are persistent and viable in terms of population size, age structure, and recruitment; (3) each local population and their habitat are sufficiently protected from any present and foreseeable threats that would jeopardize their continued existence; (4) measures are in place to prevent the spread of zebra mussels into habitat occupied by the scaleshell where zebra mussels have not become established; and (5) water quality criteria may be added to the recovery criteria for delisting upon completion of the tasks referred to under the recovery criteria for reclassification. Additional detail on downlisting and delisting criteria is available in the draft recovery plan.

These criteria will be met through the following actions: (1) Prevent the extirpation and stabilize existing populations through artificial propagation; (2) form partnerships and use existing programs to protect remaining populations, restore habitat, and improve surface lands; (3) improve understanding of the biology and ecology of scaleshell; (4) further delineate the current status and distribution of scaleshell; (5) restore degraded habitat in areas of historical range; (6) reintroduce scaleshell into portions of its former range; (7) initiate various educational and public outreach actions to heighten awareness of the scaleshell as an endangered species and solicit help with recovery actions; and (8) track recovery and conduct periodic evaluations with respect to recovery criteria.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be sent to the Field Supervisor, Ecological Services Field Office (*see* **ADDRESSES** section). Comments received will be available for public inspection by appointment during normal business hours.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 14, 2004.

Ms. Lynn Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 04–17974 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Hungerford's Crawling Water Beetle (*Brychius hungerfordi*) Draft Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of the draft recovery plan for the Hungerford's crawling water beetle (*Brychius hungerfordi*), a species that is federally listed as endangered under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The purpose of this plan is to recover this species so that it can be removed from the list of Threatened and Endangered Species. The species is only known to occur at four sites in Michigan and one site in Ontario, Canada. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 7, 2004.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, Michigan 48823–6316 (telephone (517) 351–2555) or by accessing the Web site: *http://midwest.fws.gov/Endangered.*

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Tansy at the above address and telephone (ext. 289). TTY users may contact Ms. Tansy through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

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 Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally listed threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for reclassification and delisting, and provide estimates of the time and costs for implementing the 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, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

Hungerford's crawling water beetle was listed as endangered on March 7, 1994. At the time of its listing, this species was known to occur at only three locations—two in Michigan and one in Ontario, Canada. Since then, two additional sites in Michigan have been discovered. The distribution of this species prior to its discovery in 1952 is not known. Currently, only one site is believed to support a stable population of the species. The species occurs in low numbers at the other four sites, and the status of these populations is not known. Hungerford's crawling water beetle is an aquatic species that is found in streams downstream from culverts, beaver and natural debris dams, and human-made impoundments. It is found in areas of streams with good aeration, moderate to fast flow, inorganic substrate, and alkaline water conditions. Very little information is available on the life history and habitat requirements of this species. Threats appear to be related to habitat alteration and degradation of water quality, and may include habitat modification, fish management activities, and human disturbance. Factors limiting the species distribution are not known. The small size and limited distribution of Hungerford's crawling water beetle make it vulnerable to chance demographic and environmental events. The draft recovery plan recommends research to examine important

components of the species' biology and ecology that will contribute greatly to the recovery program.

Hungerford's crawling water beetle will be considered for downlisting to threatened status when the likelihood of the species becoming extinct in the foreseeable future has been eliminated by the achievement of the following interim criteria: (1) Life history, ecology, population biology, and habitat requirements are understood well enough to fully identify threats; and (2) a minimum of four U.S. populations, in at least two different watersheds, have had stable or increasing populations for at least 10 years.

Hungerford's crawling water beetle will be considered for delisting when the likelihood of the species becoming threatened in the foreseeable future has been eliminated by the achievement of the following interim criteria: (1) Identify and protect habitat necessary for long-term survival and recovery; and (2) a minimum of four U.S. populations, in at least two different watersheds, are sufficiently secure and adequately managed to assure long-term viability. The recovery criteria are interim because further research is needed to make them fully measurable. As new information about the species becomes available, and if new populations of the species are discovered, the recovery criteria will be revised. Additional detail on downlisting and delisting criteria is available in the draft recovery plan.

These criteria will be met through the following actions: (1) Protect known sites; (2) conduct scientific research to facilitate recovery; (3) conduct additional surveys and monitor existing sites; (4) develop and implement public education and outreach; (5) revise recovery criteria and recovery tasks, as appropriate, based on research and new information; and (6) develop a plan to monitor *B. hungerfordi* after it is delisted.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be sent to the Field Supervisor, Ecological Services Field Office (*see* **ADDRESSES** section). Comments received will be available for public inspection by appointment during normal business hours.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 23, 2004.

Mr. Robert Krska,

Acting Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 04–17975 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Yurok Tribe Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Yurok Tribe's Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor on the Yurok Reservation. This ordinance allows for the possession and sale of alcoholic beverages on the Yurok Reservation, permits alcohol sales by tribally owned and operated enterprises, and increases the ability of the tribal government to control Reservation liquor distribution and possession. At the same time, it will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

EFFECTIVE DATE: This Code is effective on August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Clay Gregory, Acting Regional Director, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825; Telephone (916) 978–6000 or Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Yurok Tribe adopted the Liquor Ordinance on December 19, 2003. The purpose of this ordinance is to govern the sale, possession and distribution of alcohol on the Yurok Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

I certify that the Yurok Tribe's Liquor Ordinance was duly adopted by the Yurok Tribal Council on December 19, 2003.

Dated: July 30, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

Yurok Tribe of California Liquor Control Ordinance

Be it enacted by the Tribal Council of the Yurok Tribe of California as follows:

Article 1: Name: This statute shall be known as the Yurok Tribe Liquor Control Ordinance.

Article 2: Authority: This statute is enacted pursuant to the Act of August 15, 1953, (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and Article VI of the Constitution of the Yurok Tribe of California.

Article 3: Purpose: The purpose of this statute is to regulate and control the possession and sale of liquor on the Yurok Reservation, and to permit alcohol sales by tribally owned and operated enterprises, and at tribally approved special events, for the purpose of the economic development of the Tribe. The enactment of a tribal statute governing liquor possession and sales on the Yurok Reservation will increase the ability of the tribal government to control Reservation liquor distribution and possession, and will provide an important source of revenue for the continued operations and strengthening of the tribal government, the economic viability of tribal enterprises, and the delivery of tribal government services. This Liquor Control Ordinance is in conformity with the laws of the State of California as required by 18 U.S.C. 1161, and with all applicable federal laws.

Article 4: Effective Date: This statute shall be effective as of the date of its publication in the **Federal Register**.

Article 5: Possession of Alcohol: The introduction or possession of alcoholic beverages shall be lawful within the exterior boundaries of the Yurok Reservation, provided that such sales are in conformity with the laws of the State of California.

Article 6: Sales of Alcohol.

(a) The sale of alcoholic beverages by business enterprises owned by and subject to the control of the Tribe shall be lawful within the exterior boundaries of the Yurok Reservation; provided that such sales are in conformity with the laws of the State of California.

(b) The sale of alcoholic beverages by the drink at special events authorized by the Tribe shall be lawful within the exterior boundaries of the Yurok Reservation; provided that such sales are in conformity with the laws of the State of California and with prior approval by the Tribe.

Article 7: Age Limits: The drinking age within the Yurok Reservation shall be the same as that of the State of California, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. At such time, if any, as California Business and Profession case 25658, which sets the drinking age for the State of California, is repealed or amended to raise or lower the drinking age within California, this Article shall automatically become null and void, and the Tribal Council shall be empowered to amend this Article to match the age limit imposed by State law, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

Article 8: Civil Penalties: The Tribe, through its Tribal Council shall have the authority to enforce this statute by confiscating any liquor sold, possessed or introduced in violation hereof. The Tribal Council shall be empowered to sell such confiscated liquor for the benefit of the Tribe and to develop and approve such regulation as may become necessary for enforcement of this ordinance.

Article 9: Prior Inconsistent Enactments: Any prior tribal laws, resolutions, or statutes, which are inconsistent with this statute, are hereby repealed to the extent they are inconsistent with this statute.

Article 10: Sovereign Immunity: Nothing contained in this statute is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies from un-consented suit or action of any kind.

Article 11: Severability: If any provision of this statute is found by any agency or court of competent jurisdiction to be unenforceable, the remaining provisions shall be unaffected thereby.

Article 12: Amendment: This statute may be amended by a majority vote of the Tribal Council of the Tribe at a duly noticed Tribal Council meeting, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

Certification

This is to certify that this Liquor Control Ordinance was approved at a regularly scheduled meeting of the Yurok Tribal Council on 12/19/03, at which a quorum was present and that this ordinance was adopted by a vote of 6 For, 2 Opposed, 0 Abstentions. This ordinance has not been rescinded or amended in any way.

Dated this 19th day of December 2003.

Howard McConnell,

Chairperson, Yurok Tribal Council.

Attest:

Fawn Murphy,

Recording Secretary, Yurok Tribal Council.

[FR Doc. 04–17976 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–04–1020–PH]

New Mexico Resource Advisory Council, Notice of Call for Nominations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held on September 14–15, 2004, beginning at 8 a.m. at the Inn of Loretto, 211 Old Santa Fe Trail, Santa Fe, New Mexico. The meeting will adjourn at approximately 5 p.m. on Tuesday, September 14, 2004, and 3:30 p.m. on Wednesday, September 15, 2004. The two established RAC working groups may have a late afternoon or an evening meeting on Tuesday, September 14, 2004. An optional field trip is planned for Monday, September 13, 2004, at 12:30 p.m.

The public comment period is scheduled for Monday, September 14, 2004, from 6–7 p.m. The public may present written comments to the RAC. Depending on the number of persons wishing to comment and time available, individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505.438.7517.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics for discussion include: Sierra/Otero Mesa Counties Fluid Mineral Leasing Plan Amendment, directional drilling of oil and gas wells to mitigate surface impacts, follow-up on rancher monitoring, discussion on the Ecological Site Description Effort, Interim Guidelines for Special Status Species Plan Amendment, the Access Proposal, what are the problems for threatened and endangered and other imperiled species on BLM lands, and election of new officers.

Dated: July 30, 2004.

Linda S.C. Rundell,

State Director.

[FR Doc. 04–17977 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–820–02–5440–DT –C028]

Notice of Availability of the Proposed San Juan/San Miguel Resource Management Plan Amendment and Final Environmental Impact Statement for a Proposed Ski Area Near Silverton, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the proposed San Juan/San Miguel Resource Management Plan Amendment and final environmental impact statement (PRMP Amendment /FEIS) for a proposed ski area near Silverton, Colorado.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) has prepared a PRMP Amendment and FEIS for the proposed ski area. The proposed area lies in San Juan County, Colorado. The PRMP Amendment/FEIS provides direction and guidance for the management of public lands and resources of the ski area, as well as monitoring and evaluation requirements. The PRMP Amendment/FEIS would also amend the San Juan/San Miguel RMP (1985) for the affected lands in the planning area. Once approved in a Record of Decision (ROD), the Amended RMP would supercede all existing management plans for the public lands within the ski area.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental

Protection Agency publishes this notice in the **Federal Register**. Instructions for filing of protests are described in Chapter One of the PRMP Amendment/FEIS and are also included in the Supplementary Information section of this notice.

FOR FURTHER INFORMATION CONTACT: To have your name added to our mailing list, contact Richard Speegle, Project Manager, at 970–375–3310, (or e-mail at *richard_speegle@blm.gov*) Columbine Field Office, San Juan Public Lands Center, 15 Burnett Ct., Durango, CO 81301.

Persons who are not able to inspect the PRMP Amendment/FEIS either on-line or at the information repository locations may request one of a limited number of printed or CD copies. Requests for copies of the PRMP Amendment/FEIS should be directed to Mr. Speegle, and should clearly state that the request is for a printed copy or CD of the Silverton Outdoor Learning and Recreation Center PRMP Amendment/FEIS, and include the name, mailing address and phone number of the requesting party.

Copies of the PRMP Amendment/FEIS have been sent to affected Federal, State, and Local Government agencies and to interested parties. The planning documents and direct supporting record for the analysis for the PRMP Amendment/FEIS will be available for inspection at the following offices:

—The Bureau of Land Management, Columbine Field Office, 110 W. 11th, Durango, Colorado 81301
—The Bureau of Land Management, San Juan Public Lands Center, 15 Burnett Ct., Durango Colorado (documents can be reviewed at the BLM office during normal working hours).
—Silverton Public Library, 1111 Reese Street, Silverton, Colorado
—The Durango Public Library, 1188 2nd Ave, Durango, Colorado
—The public may obtain a copy of the PRMP Amendment/FEIS from the following locations:
—The Bureau of Land Management Columbine Field Office & the San Juan Public Lands Center
—On the Internet at *www.co.blm.gov/sjra.*

SUPPLEMENTARY INFORMATION: Cirrus Ecological Solutions, L.C, an environmental consulting firm in Logan, Utah, is assisting the BLM in the preparation of these documents and in the planning process for the ski area. The EIS is being prepared to provide the public and Bureau decision makers with comprehensive environmental impact information related to the following Proposed Action: authorization of Silverton Outdoor Learning and Recreation Center's request for long-term use of 1,300 acres of BLM–administered land for backcountry-type skiing, summer recreation, and educational activities. The Proposed Action would require an Amendment of the San Juan/San Miguel RMP to provide for a change in the scope of authorized resource uses. The planning area addressed in the PRMP Amendment/FEIS contains 1,300 acres of BLM–administered lands, and 400 acres of private lands owned by the proponent. The PRMP Amendment/FEIS only applies to BLM–administered lands. Other private lands are included within the planning area boundary because these lands are interspersed with the BLM administered-lands.

The Draft RMP(DRMP) Amendment/Draft EIS(DEIS) published in June 2003, addressed four alternatives: the Proposed Action (Unguided Skiing Only), (A) No Action, or continuation of current practices, (B) Guided Skiing Only, and (C) the Preferred Alternative, an Integrated Guided and Unguided Operation. The PRMP Amendment/FEIS still includes Alternative C as the Agency Preferred Alternative. However, the PRMP Amendment/FEIS reflects the public and internal comments received on DRMP Amendment/DEIS.

The significant issues addressed in the analysis included the following: 1. Public safety (including avalanche mitigation); 2. Canada lynx impacts; 3. Impacts on the local winter economy; 4. Impacts to neighboring private lands; and 5. Public access to the area. Of these, public safety drove the development of alternatives. The Agency Preferred Alternative (C) Integrated Guided and Unguided Operation, would blend the unguided skiing under the Proposed Action with the Guided Only Operation of Alternative (B), incorporating the skier safety approaches appropriate to both. The Preferred Alternative (C) would include all elements of both the Proposed Action and the Guided Only Operation of Alternative (B), with the following exceptions:

1. Skier access to the permit area terrain would be staged according to skier safety hazards. Areas where risks were adequately reduced, due to avalanche control efforts and/or naturally evolving snow conditions, would be open to unguided skiing. Areas where hazards existed but could be avoided would be open to guide skiing only, and areas where the hazard was too high to reliably avoid, would be closed.

2. Limited tree thinning, limbing and clean-up on forested, north-facing slopes within the permit area. The objective would be to increase skier rescue and safe tree-skiing opportunities, primarily for unguided skiers, during periods of high avalanche hazard above timberline.

3. A 1.7 mile trail, less steep than the existing lift trail on private land, would be developed for emergency snowmobile access to the top lift terminal. It would also be available for hiker and mountain biker access in the summer months.

This alternative would incorporate both approaches to skier safety, from resort-style risk reduction as envisioned under the Proposed Action to the risk-avoidance approach typical of guided operations (Alternative B). Determination of which areas were open for unguided skiing and for guided skiing—and which areas were closed to skiing of any type—would be made on the basis of snow-stability criteria detailed in the skier-safety operation plan.

The planning process includes an opportunity for public, administrative review of proposed land use plan decisions during a 30-day protest period of the PRMP Amendment/FEIS. Any person who participated in the planning process for the PRMP Amendment/FEIS, and has an interest which is or may be adversely affected, may protest approval of this PRMP Amendment/FEIS and land use plan decisions contained within it (See 43 CFR 1610.5–2) during this 30-day period. Only those persons or organizations who participated in the planning process leading to this PRMP Amendment/FEIS may protest. A protesting party may raise only those issues submitted for the record during the planning process leading up to the publication of this PRMP Amendment/FEIS. These issues may have been raised by the protesting party or others. New issues may not be brought into the record at the protest stage. The 30-day period for filing a plan protest begins when the Environmental Protection Agency publishes in the **Federal Register** its Notice of Availability of the Final Environmental Impact Statement containing the PRMP Amendment/FEIS. There is no provision for any extension of time. To be considered "timely", your protest, along with all attachments, must be postmarked no later than the last day of the protest period. A letter of protest must be filed in accordance with the planning regulations, 43 CFR 1610.5–2(a)(1). Protests must be in writing. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close

of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. If sent by regular mail, send to: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035. For overnight (*i.e.*, Federal Express) mailing, send protests to: Director (210) Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036. In order to be considered complete, your protest must contain at a minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the PRMP Amendment/FEIS being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc. included in the document.

4. A copy of all documents addressing the issue or issues that you submitted during the planning process, or a reference to the date and issue or issues that were discussed by you for the record.

5. A concise statement explaining why the Colorado BLM State Director's proposed decision is believed to be incorrect. This is the critical part of your protest. Take care to document relevant facts.

As much as possible, reference or cite the planning documents, environmental analysis documents, or available planning records (*i.e.*, meeting minutes or summaries, correspondence, etc.). A protest that merely expresses disagreement with the Colorado BLM State Director's proposed decision, without any data, will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data. At the end of the 30-day protest period and after the Governor's consistency review, the PRMP Amendment/FEIS, excluding any portions under protest, will become final. Approval will be withheld on any portion of the PRMP Amendment/FEIS under protest until final action has been completed on such protest.

Freedom of Information Act Considerations/Confidentiality: Public comments submitted for this planning review, including names and street addresses of respondents, will be available for public review at the Columbine Field Office, in Durango, Colorado, during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Comments, including names and addresses of respondents, will be retained on file in the same office as part of the public record for this planning effort. Individual respondents may request confidentiality. If you wish to withhold your name or address from public inspection 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. BLM will not accept anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: March 9, 2004.

Mark W. Stiles,

Center Manager, San Juan Public Lands Center.

Editorial Note: This document was received in the Office of the Federal Register on July 30, 2004.

[FR Doc. 04–17851 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–04–5101–ER–F344; N–78091]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed White Pine Energy Station, a Coal-Fired, Water-Cooled, Electric Power Plant, and Associated Ancillary Facilities in White Pine County, Nevada and a Notice of Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Ely Field Office, will be directing the preparation of an EIS and conducting public scoping meetings for the proposed White Pine Energy Station, a coal-fired, water-cooled, electric power plant and associated ancillary facilities. The EIS will assess the potential impacts of rights-of-way (ROW), a conveyance, or a commercial lease for a proposed power-generating facility and ROW for the proposed associated ancillary facilities in White Pine County, Nevada.

The proposed White Pine Energy Station includes up to two 500 to 800 megawatt coal-fired generating units and other related facilities, including but not limited to, a rail loop, coal unloading, handling and storage facilities, solid waste disposal facility, water storage and treatment facilities, evaporation pond, cooling towers, electric switchyard and support buildings. Ancillary facilities would include wells, water pipeline and related facilities, rail spur, access roads and electric transmission facilities, which include electric transmission lines and two electric substations.

DATES: The publication of this notice initiates the public scoping process and comment period. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS should be submitted in writing to the address below. Comments will be accepted until September 7, 2004. This scoping notice will be distributed by mail on or about the date of this notice. All comments received at the public scoping meetings or through submitted written comments will aid the BLM in identifying alternatives and mitigating measures to assure all issues are analyzed in the EIS. The scoping meetings are scheduled as follows: Tuesday, August 24, 2004, 5 p.m. to 8 p.m. at the Bristlecone Convention Center, 150 6th St., Ely, Nevada. Wednesday, August 25, 2004, 5 p.m. to 8 p.m. at the Airport Plaza, 1981 Terminal Way, Reno, Nevada.

ADDRESSES: Information and a copy of this notice of intent for the White Pine Energy Station can be obtained by writing to the Bureau of Land Management, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301, or visiting the Ely Field Office at 702 North Industrial Way, Ely, NV 89301.

Written comments on the proposed EIS should be mailed to Doris Metcalf or Susan Baughman, Bureau of Land Management, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Doris Metcalf at (775) 289–1852, e-mail *Doris_Metcalf@nv.blm.gov*, or Susan Baughman at (775) 289–1827, e-mail *Susan_Baughman@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: The proposed White Pine Energy Station would be located in the eastern part of Nevada in White Pine County. The proposed power plant site would be accessible via an access road from Highway 93. The water wells, the water pipeline and related facilities, rail spur and one electric substation would be

located in mostly flat terrain along the Steptoe Valley floor. The electric transmission line ROW would begin at a proposed new electric substation adjacent to the power plant site and would mostly follow a previously permitted utility corridor through Steptoe Valley, across the Egan Range, through Butte Valley and terminate near Robinson Summit at the second proposed electric substation. The proposed second electric substation would be accessible via an access road from Highway 50. An additional electric transmission line ROW would be needed to loop an existing electric transmission line located about ½ mile south of the proposed second electric substation into the proposed second electric substation.

The proposed power plant development area and ancillary facilities would encompass approximately 2,800 acres: approximately 1,300 acres would be required for the power plant site and access, approximately 1,250 acres would be used for ancillary facilities, and approximately 250 acres would be used for temporary construction laydown for the ancillary facilities. The facilities would be generally located within and/or across the following sections of public land:

Mount Diablo Meridian, White Pine County, Nevada

Power Plant Site & Access Road

T. 21 N., R. 64 E., Sections 4, 5, 6,
T. 22 N., R. 64 E., Sections 29, 30, 31 & 32.

Rail Spur

T. 22 N., R. 64 E., Section 31
T. 22 N., R 63 E., Section 36.

Transmission Line

T. 18 N., R. 60 E., Sections 6, 7, 18, 19,
T. 19 N., R. 61 E., Sections 1, 10, 11, 12, 14, 15, 16, 21, 22, 28, 29, 30, 31
T. 19 N., R. 62 E., Section 6,
T. 20 N., R. 62 E., Sections 13, 14, 15, 21, 22, 23, 28, 29, 31, 32,
T. 20 N., R. 63 E., Sections 1, 2, 7, 8, 9, 10, 11, 17, 18,
T. 21 N., R. 63 E., Sections 1, 2, 11, 14, 23, 26, 34, 35,
T. 21 N., R.64 E., Section 5 & 6.

Electric Substations & Access Roads

T. 21 N., R. 64 E., Section 4, 5,
T. 18 N., R. 61 E., Sections 18 & 19.

Water Facilities

T. 19 N., R. 63 E., Sections 24 & 25
T. 19 N., R. 64 E., Sections 6, 7, 18, 19, 30,
T. 20 N., R. 64 E., Sections 4, 8, 9, 17, 19, 20, 30, 31,
T. 21 N., R. 64 E., Sections 5, 6, 8, 17, 20, 29, 31, 32,
T. 22 N., R. 64 E., Sections 5, 6, 7, 18, 19, 20, 29, 30, 32,
T. 23 N., R. 63 E., Sections 13, 14, 15, 16,
T. 23 N., R. 64 E., Sections 4, 9, 16, 17, 18, 20, 29, 31, 32,
T. 24 N., R. 64 E., Sections 2, 10, 11, 15, 22, 27, 28, 33,
T. 25 N., R. 64 E., Sections 13, 24, 25, 26, 35,
T. 25 N., R. 65 E., Sections 4, 5, 7, 8, 18,
T. 26 N., R. 65 E., Sections 23, 26, 27, 33, 34.

A map of the proposed project is available for viewing at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, NV 89301.

Public Scoping Meetings: Two public scoping meetings are planned. The meetings will provide the public an opportunity to present comments concerning the Proposed Action that will be addressed in the EIS. The meetings will be held in an "open house format" beginning at 5 p.m. and ending at 8 p.m. Meetings have been scheduled for the following locations:

- Tuesday, August 24, 2004, 5 p.m. to 8 p.m. at the Bristlecone Convention Center, 150 6th St., Ely, Nevada.
- Wednesday, August 25, 2004, 5 p.m. to 8 p.m. at the Airport Plaza, 1981 Terminal Way, Reno, Nevada.

Dated: July 12, 2004.

Jeffrey A. Weeks,

Acting Field Manager.

[FR Doc. 04–18130 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–518]

Notice of Investigation; Certain Ear Protection Devices

AGENCY: 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 July 2, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of 180s, Inc. and 180s, LLC of Baltimore, Maryland. An amended complaint was filed on July 23, 2004. The amended complaint 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 ear protection devices by reason of infringement of claims 1, 3, 13, 17–19, and 21–22 of U.S. Patent No. 5,835,609. 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 general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and the amended complaint, 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 be obtained by accessing its Internet server (*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: Benjamin D. M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 2, 2004, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation will 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 ear protection devices by reason of infringement of one or more of claims 1, 3, 13, 17–19, and 21–22 of U.S. Patent No. 5,835,609, 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—180s, Inc., 701 E. Pratt Street, Suite 180, Baltimore, Maryland 21202–3101. 180s, LLC, 701

E. Pratt Street, Suite 180, Baltimore, Maryland 21202–3101.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Ningbo Electric and Consumer Goods, Import & Export Corp., 17/F Ling Qiao Square, 31 Yao Hang Street, Ningbo, Zhejiang 315000, China. Vollmacht Enterprise Co., Ltd., 5F, No. 360, Ruei Guang Road, Neihu, Taipei, Taiwan. March Trading, 1239 Broadway, Room 1606, New York, NY 10010. Alicia International, Inc., d/b/a Lincolnwood Merchandising, 7354 N. Caldwell Avenue, Niles, IL 60714. Hebron Imports, 4142 W. Lawrence Avenue, Chicago, IL 60630. Ross Sales, 231 Commack Road, Commack, NY 11725. Value Drugs Rock, Inc., 30 Rockefeller Center, New York, NY 10020. Song's Wholesale, 1301–A 14th Street, NE., Washington, DC 20002. Wang Da, Inc. Retail and Wholesales, 230 Canal Street, New York, NY 10013.

(c) Benjamin D. M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 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 responses 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 the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a 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 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 the respondent.

Issued: August 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18015 Filed 8–5–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–519]

Notice of Investigation; Certain Personal Computers, Monitors, and Components Thereof

AGENCY: 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 July 2, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Gateway, Inc. of Poway, California. Supplements were filed on July 16 and 30, 2004. The complaint 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 personal computers, monitors, and components thereof by reason of infringement of claims 1–3, 9–11, 13–14, 20–21, 27–28, 30–32, and 38–40 of U.S. Patent No. 5,881,318, claims 1–3, 5, 7–12, 14–29, 31–36, and 38 of U.S. Patent No. 5,192,999, and claims 1–2 and 4–6 of U.S. Patent No. 6,326,996. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and its exhibits, 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: Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 2, 2004, *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 personal computers or monitors or components thereof by reason of infringement of one or more of claims 1–3, 9–11, 13–14, 20–21, 27–28, 30–32, and 38–40 of U.S. Patent No. 5,881,318, claims 1–3, 5, 7–12, 14–29, 31–36, and 38 of U.S. Patent No. 5,192,999, and claims 1–2 and 4–6 of U.S. Patent No. 6,326,996, 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 complainant is—Gateway, Inc., 14303 Gateway Place, Poway, California 92064.

(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: Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304.

(c) Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. 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 section 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 not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint and the notice of investigation 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 a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: August 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18016 Filed 8–5–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1043–1045 (Final)]

Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China, Malaysia, and Thailand of polyethylene retail carrier bags (PRCBs), provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 20, 2003, following receipt of a petition filed with the Commission and Commerce by an ad hoc coalition of U.S. polyethylene retail carrier bag producers (consisting of Inteplast Group, Ltd. (Inteplast), Livingston, NJ; PCL Packaging, Inc. (PCL), Barrie, Ontario; Sonoco Products Company (Sonoco), Hartsville, SC; Superbag Corp. (Superbag), Houston, TX; and Vanguard Plastics, Inc. (Vanguard), Farmers Branch, TX). The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of PRCBs from China, Malaysia, and Thailand were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 9, 2004 (69 FR 6004). The hearing was held in Washington, DC, on June 10, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 2, 2004. The views of the Commission are contained in USITC Publication 3710 (July 2004), entitled Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand: Investigations Nos. 731–TA–1043–1045 (Final).

Issued: August 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18013 Filed 8–5–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–517]

Notice of Investigation; Certain Shirts With Pucker-Free Seams and Methods of Producing Same; Corrected;

AGENCY: 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 July 1, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.1337, on behalf of TALTECH Limited of Tortola, British Virgin Islands, TAL Apparel Limited of Kowloon, Hong Kong, and The Apparel Group Limited of Addison, Texas. A letter supplementing the complaint was filed on July 21, 2004. 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 shirts with pucker-free seams by reason of infringement of claims 1, 4, 20, and 22 of U.S. Patent No. 5,568,779; claims 1, 11, 19, and 26 of U.S. Patent No. 5,590,615; claims 1, 3, 13, and 16 of U.S. Patent No. 5,713,292; and claims 16, 19, 35, and 38 of U.S. Patent No. 6,079,343. 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 exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplement, 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 document information system (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 29, 2004, *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 shirts with pucker-free seams by reason of infringement of claims 1, 4, 20, or 22 of U.S. Patent No. 5,568,779; claims 1, 11, 19, or 26 of U.S. Patent No. 5,590,615; claims 1, 3, 13, or 16 of U.S. Patent No. 5,713,292; or claims 16, 19, 35, or 38 of U.S. Patent No. 6,079,343; 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—TALTECH Limited, Trident Corporate Services, Ltd., Road Town, Tortola, British Virgin Islands. TAL Apparel Limited, TAL Building, 4th Floor, 49 Austin Road, Kowloon, Hong Kong. The Apparel Group Limited 5080 Spectrum Drive, Suite 800 East Addison, TX 75001

(b) The respondents are the following companies alleged to be in violation of section 337, and are parties upon which the complaint is to be served: Esquel Apparel, Inc. 14 East 33rd Street, 11N New York, NY 10016. Esquel Enterprises, Ltd., 12/F, Harbour Centre, 25 Harbour Road, Wanchai, Hong Kong.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, 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.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 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 responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a 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 a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

Issued: August 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18014 Filed 8–5–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–022]

Sunshine Act Meeting Notice

AGENCY: United States International Trade Commission.

TIME AND DATE: August 23, 2004, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–208 (Second Review)(Barbed Wire and Barbless Wire Strand from Argentina)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 30, 2004.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 4, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18111 Filed 8–4–04; 11:24 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on June 30, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were field for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BBC Technology, San Jose, CA; and SeaChange International, Maynard, MA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 16, 1004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 2004 (69 FR 17709).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–17994 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on July 2, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Evatone, Inc., Clearwater, FL; Optrom, Inc., Miyagi-ken, JAPAN; Rainbo Records Mfg. Corp., Santa Monica, CA; Shanghai Epic Music Manufacturing Operations, Shanghai, People's Republic of China; Shenzhen Vall Technology Co., Ltd., Shenzhen, People's Republic of China; and Taiwan Thick—Film Ind. Corp, Taipei Hsien, Taiwan have been added as parties to this venture. Also, Regency Recordings has changed its name to AAV Regency, Braeside, Victoria, Australia.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on January 6, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 12, 2004 (69 FR 7013).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–17997 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on June 29, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SumTotal Systems, Inc., Bellevue, WA has been added as a party to this venture. Also, Xtensis, London, United Kingdom; Learning Objects Network, Inc., Waitsfield, VT; Docent, Inc., Mountain View, CA; and Click 2 Learn, Bellevue, WA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on April 1, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 2004 (69 FR 24195).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–17995 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Storage Industry Consortium—Heat Assisted Magnetic Recording

Notice is hereby given that, on June 9, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Information Storage Industry Consortium ("INSIC") has filed written notifications on behalf of a joint research and development venture with Heat Assisted Magnetic Recording ("HAMR") simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National Storage Industry Consortium, San Diego, CA has changed its name to Information Storage Industry Consortium, San Diego, CA. Also, a seventh participant has joined the INSIC–HAMR Project: specifically, the Regents of the University of Minnesota on behalf of the University of Minnesota, Minneapolis, MN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and INSIC–HAMR intends to file additional written notifications disclosing all changes in membership.

On January 8, 2002, INSIC–HAMR filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2002 (67 FR 10761).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–17996 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1407]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *http://www.it.ojp.gov/global.*

DATES: The meeting will take place on Tuesday, September 28, 2004, from 1 p.m. to 5 p.m. et, and Wednesday, September 29, 2004, from 8:30 a.m. to 12 noon et.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202; Phone: (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616–0532 [Note: this is not a toll-free number]; e-mail: *james.p.mccreary.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Dated: August 2, 2004.

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 04–18004 Filed 8–5–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 13, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Course Evaluation.

OMB Number: 1218–0173.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 20,900.

Number of Annual Responses: 20,900.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 3,483.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected on the OSHA Form 49 is obtained from students upon completion of a training course. OSHA uses the information to evaluate the usefulness, effectiveness, and content of courses.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–18011 Filed 8–5–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits

have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY030017 (Jun. 13, 2003)
Connecticut
CT030001 (Jun. 13, 2003)
CT030003 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030015 (Jun. 13, 2003)
Virginia
VA030055 (Jun. 13, 2003)

Volume III

None

Volume IV

Illinois
IL030001 (Jun. 13, 2003)
IL030002 (Jun. 13, 2003)
IL030003 (Jun. 13, 2003)
IL030004 (Jun. 13, 2003)
IL030006 (Jun. 13, 2003)
IL030021 (Jun. 13, 2003)
IL030022 (Jun. 13, 2003)
IL030024 (Jun. 13, 2003)
IL030027 (Jun. 13, 2003)
IL030028 (Jun. 13, 2003)
IL030029 (Jun. 13, 2003)
IL030031 (Jun. 13, 2003)
IL030032 (Jun. 13, 2003)
IL030033 (Jun. 13, 2003)
IL030034 (Jun. 13, 2003)
IL030036 (Jun. 13, 2003)
IL030037 (Jun. 13, 2003)
IL030044 (Jun. 13, 2003)
IL030045 (Jun. 13, 2003)
IL030046 (Jun. 13, 2003)
IL030050 (Jun. 13, 2003)
IL030051 (Jun. 13, 2003)
IL030054 (Jun. 13, 2003)
IL030063 (Jun. 13, 2003)
IL030064 (Jun. 13, 2003)
IL030066 (Jun. 13, 2003)
IL030067 (Jun. 13, 2003)
IL030068 (Jun. 13, 2003)
IL030070 (Jun. 13, 2003)
Michigan
MI030003 (Jun. 13, 2003)
MI030005 (Jun. 13, 2003)
MI030007 (Jun. 13, 2003)
MI030012 (Jun. 13, 2003)
MI030016 (Jun. 13, 2003)
MI030020 (Jun. 13, 2003)
MI030027 (Jun. 13, 2003)
MI030030 (Jun. 13, 2003)
MI030031 (Jun. 13, 2003)
MI030034 (Jun. 13, 2003)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

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Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29 day of July, 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–17698 Filed 8–5–04; 8:45 am]

BILLING CODE 4510–27–P

POSTAL RATE COMMISSION

Sunshine Act Meetings

AGENCY: Postal Rate Commission.

TIME AND DATE: August 11, 2004 at 9:30 a.m.

PLACE: Commission conference room, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Item No. 1: Discussion and vote on the Postal Rate Commission's fiscal year 2005 budget; item No. 2: Selection of vice chairman.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, 202–789–6818 or *sharfmans@prc.gov*.

Dated: August 3, 2004.

Steven W. Williams,

Secretary.

[FR Doc. 04–18157 Filed 8–5–04; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50122; File No. SR–Amex–2004–32]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC to Amend Article II, Section 3 of the Exchange Constitution

July 29, 2004.

I. Introduction

On May 12, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article II, Section 3 of the Exchange Constitution to provide the Amex the ability to contract with another self-regulatory organization for regulatory services. The proposed rule change was published for comment in the **Federal Register** on June 3, 2004.[3] The Commission received no comments on the proposed rule change. On June 24, 2004, Amex filed Amendment No. 1 to the proposal.[4] This order approves the proposed rule change.

II. Description of Proposal

The Exchange proposes to amend Article II, Section 3 of the Exchange Constitution to create a mechanism to allow the Exchange to contract with another self-regulatory organization for the performance of certain of Amex's regulatory functions. The amendment would authorize an officer of the Exchange, on behalf of the Exchange, subject to approval by the Amex Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act.[5] Under the proposal, any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of Amex pursuant to a regulatory services agreement will be deemed to be an action taken by the Exchange. However, the amended Constitution states that nothing in Article II, Section 3 shall affect the oversight of such other self-regulatory organization by the Commission. The amended Constitution also provides that Amex will retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and that any such regulatory services agreement shall so provide.

In the proposal, the Exchange noted that this rule change would have immediate applicability with respect to a Regulatory Services Agreement ("RSA") dated as of April 30, 2004, between the National Association of Securities Dealers, Inc. ("NASD") and the Amex.[6] Amex determined that, to best discharge its self-regulatory responsibilities, it would contract with the NASD, which is subject to Commission oversight pursuant Sections 15A and 19 of the Act,[7] to provide certain regulatory services to the Amex. Under the RSA, NASD, through its wholly owned subsidiaries NASD Regulation, Inc. ("NASDR") and NASD Dispute Resolution, Inc. ("NASDDR"), performs certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49775 (May 26, 2004), 69 FR 31437.

[4] *See* letter from William Floyd-Jones, Jr., Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, ("Division"), Commission, dated June 23, 2004 ("Amendment No. 1"). In Amendment No. 1 the Exchange advised that on June 22, 2004, the proposed rule change was approved by New NASD Holdings, Inc., the holder of the Class B interest in the Exchange, and as a result, the Exchange's internal procedures with respect to the proposed rule change were complete. Amendment No. 1 is a technical amendment, and, therefore, not subject to notice and comment.

[5] 15 U.S.C. 78f and 15 U.S.C. 78s(g).

[6] Pursuant to applicable provisions of the Freedom of Information Act, 18 U.S.C. 1905, and Commission regulations thereunder, 17 CFR 200.83, Amex has requested confidential treatment for the RSA.

[7] 15 U.S.C. 78*o*–3 and 15 U.S.C. 78s.

regulatory functions as an agent on behalf of Amex. The RSA provides a framework for oversight of Amex members and enforcement of Amex rules and federal securities laws, and describes the services that NASD will perform so as to ensure a regulatory program that will satisfy applicable statutory requirements. Specifically, pursuant to the RSA, NASDR and NASDDR will provide market and trade practice surveillance and analysis; financial and operational regulation; options sales practice regulation; disciplinary and enforcement functions; and dispute resolution services.

The Amex stated that in performing services under the RSA, the NASD will be operating pursuant to the statutory self-regulatory responsibilities of the Amex under Section 6 and Section 19 of the Act[8] and will apply Amex's rules. The Exchange also stated that any action taken by NASD or its employees or authorized agents pursuant to the RSA (or any other SRO with which the Exchange contracts) will be deemed an action taken by the Amex (without, however, affecting the Commission's oversight of such other self-regulatory organization). The Amex noted, however, that it retains ultimate responsibility for performance of its self-regulatory duties under the RSA.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[9] Specifically, the Commission finds that the proposed rule change is consistent with and furthers the objectives of Sections 6(b)(1),[10] 6(b)(6),[11] and 6(b)(7)[12] of the Act, which require that the Exchange enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; that the rules of the Exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and that the rules of the Exchange provide a fair procedure for the disciplining of members and persons associated with members.

The Commission has previously stated and continues to believe that contractual regulatory agreements between self-regulatory organizations may be permissible in instances where it is consistent with the public interest.[13] The Commission believes that it is reasonable and consistent with the public interest to allow a self-regulatory organization to contract with another self-regulatory organization to perform disciplinary and enforcement functions.[14] The Commission also believes NASD has the expertise and experience to perform these functions, and thus will be able to assist Amex in fulfilling its self-regulatory responsibilities as set forth under the Act.

The Commission continues to believe, however, that it is important, and required by the Act, for ultimate responsibility and primary liability for self-regulatory failures to rest with the Exchange itself rather than the contracted self-regulatory organization.[15] Consistent with this approach, Amex will bear ultimate legal responsibility for the performance of its self-regulatory functions, despite the fact that NASD's subsidiaries will be carrying out the regulation of Amex's market pursuant to the RSA. Nevertheless, the Commission has stated and again reiterates that the self-regulatory organization providing regulatory services may bear liability for causing, or, in appropriate circumstances, aiding and abetting, regulatory failures by the Exchange.[16] Thus, NASD may bear secondary liability if the Commission finds that the contracted regulatory functions are being performed so inadequately as to cause a violation of the federal securities laws by Amex.

The Commission also notes that Amex has represented that any NASD employee acting pursuant to the RSA will be deemed to be an Amex employee for purposes of Amex's rules. In particular, Amex represents that for purposes of any rule that requires an employee or personnel of Amex to perform a specific regulatory oversight, disciplinary or enforcement function, any NASD employee that is performing such function pursuant to the RSA will be deemed to be an Amex employee for purposes of Amex's rules as a result of this rule change. Thus, no changes to Amex's rules are required as a result of this filing.[17]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–2004–32) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18003 Filed 8–5–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f and 15 U.S.C. 78s.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(6).

[12] 15 U.S.C. 78f(b)(7).

[13] *See* Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at Section III(D)(2) ("ISE Approval Order") (approving the application for registration of the International Securities Exchange, Inc., including authority to contract with another self-regulatory organization to perform regulatory functions).

[14] *Id.* In the ISE Approval Order, the Commission also stated that "[d]iscipline and enforcement are fundamental elements to a regulatory program, and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that NASD Regulation has the expertise and experience to perform these functions."

[15] *See* ISE Approval Order at Section III(D)(2), and Sections 6(b), 19(g) and 19(h) of the Act. 15 U.S.C. 78f(b), 78s(g) and 78s(h).

[16] *See* ISE Approval Order at footnote 68 and accompanying text.

[17] Telephone call between William Floyd-Jones, Jr., Associate General Counsel, Amex, and Heather Seidel, Attorney-Fellow, Division, Commission, on July 29, 2004.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50124; File No. SR–BSE–2004–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of the Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Extension of the Linkage Fee Pilot Program

July 30, 2004.

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 July 29, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons and is approving the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to extend the current pilot program applicable to Options Intermarket Linkage ("Linkage") fees for one year until July 31, 2005.

The proposed fee schedule is available at the principal office of the Exchange and at the Commission' 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BSE proposes to extend the current pilot program for Linkage fees on its Boston Options Exchange ("BOX") facility through July 31, 2005. BOX's current fee structure for Principal ("P") and Principal Acting as Agent ("P/A") Orders [3] executed on BOX is operating under a pilot program which expires on July 31, 2004. Currently, because all Linkage Orders received by BOX are for the account of a broker-dealer market maker on another exchange, the fees applicable to P and P/A Orders are the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of the Linkage. The side of a BOX trade opposite an inbound P or P/A order would be billed normally as any other BOX trade. Also, consistent with the Plan, no fees will be charged to a party sending a Satisfaction request ("S" order) to BOX. However, a fee will be charged to the BOX Options Participant that was responsible for the trade-through that caused the S order to be sent.

BSE now proposes to extend the pilot program to July 31, 2005, in order to remain consistent with the other options exchanges concerning these fees.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4),[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–BSE–2004–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–32. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of BSE. 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–BSE–2004–32 and should be submitted on or before August 27, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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,[6] and, in particular, with the requirements of section 6(b) of the Act [7] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[8] which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[9]

[3] Under section 2(16) of the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan") and Chapter XII of the BOX Rules, which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage orders:

(i) "P/A Order," which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "P Order," which is an order for the principal account of a market maker (or equivalent entity on another Participant exchange) and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as BSE and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [10] that the proposed rule change (SR–BSE–2004–32) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17955 Filed 8–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50130; File No. SR–CBOE–2004–47]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Marketing Fee Voting Procedures

July 30, 2004.

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 July 19, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change on a six-month pilot basis.

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reinstate its Marketing Fee Voting Procedures,[3] which previously were set forth in Interpretation and Policy .12 to CBOE Rule 8.7. Under those procedures, a trading crowd could determine whether or not to participate in the CBOE's marketing fee program. Under the procedures, as proposed to be reinstated, electronic DPMs ("e–DPMs") [4] would be incorporated into the Marketing Fee Voting Procedures.[5] Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

RULE 8.7 Obligations of Market-Makers

(a)–(c) No change.

Interpretations and Policies

.01–.11 No change.

.12 Marketing Fee Voting Procedures: The following procedures specify how a troding crowd determines whether to participate or not to porticipote in the Exchonge's morketing fee program. These procedures expire six months from the dote of SEC approval,-or such earlier time as the Commission hos opproved them on o permonent bosis.

(o) Eligible Voters

(i) The term "trading crowd" is synonymous with the term "stotion," which is defined in Interpretotion and Policy .01 to Rule 8.8.

(ii) Eligible Troding Crowd Members: Members of a troding crowd thot will be eligible to porticipote in the vote ("eligible troding crowd members") sholl include (1) those Morket-Mokers who have transocted ot least 80% of their Morket-Moker controcts ond tronsactions in eoch of the three immediately preceding calendar months in option closses troded in the troding crowd, and who continue to be present in the troding crowd in the copocity of o Morket-Maker ot the time of the vote; (2) the DPM for o trading crowd; ond (3) ony e–DPM, and shall eoch have one vote. Any e–DPM appointed to one or more option closses shall be eligible to vote on morketing fees for those option classes.

(b) Requesting o Troding Crowd Vote. Any eligible trading crowd member (including the DPM and any e–DPM) con request thot o vote be held to determine whether or not the troding crowd should continue to participate in the marketing fee progrom for one or more of the option classes located ot thot stotion by submitting a written request to thot effect to the Secretary of the Exchange. The Exchonge sholl post o notice ot the stotion ond provide written notice to the e–DPM of the time and date of ony vote to be taken at least 10 colendor doys prior to the time of the vote. The morketing fee oversight committee shall determine all other administrotive procedures pertaining to the vote.

(c) Portication in the Morketing Fee Progrom. A troding crowd sholl be deemed to hove indicated that it desires to participate in the Exchange's morketing fee progrom for one or more of the option classes located at that stotion if o mojority of those eligible troding crowd members participate in the vote and if a mojority of the total votes cost ore in favor of participoting in the morketing fee progrom for those option closses. Conversely, o troding crowd shall be deemed to have indicoted thot it does not desire to porticipote in the Exchonge's morketing fee progrom for one or more of the option classes located at that stotion if o mojority of those eligible troding crowd members porticipate in the vote ond if o mojority of the total votes cast ore agoinst particpoting in the morketing fee program for those option closses.

(i) Frequency of Vote: Once o crowd votes to porticipote in the morketing fee progrom, subsequent votes to determine whether to continue its participation moy be held only once every three colendar months. Once o crowd votes not to porticipate in the morketing fee progrom, subsequent votes to determine whether to participate in the marketing fee progrom moy be held only once every thirty doys.

(ii) Tie Votes: If o vote conducted in accordonce with this rule results in a tie, the stotus quo for thot troding crowd sholl remoin in effect. Accordingly, if the troding crowd currently porticipotes in the morketing fee progrom ond o tie vote occurs, the morketing fee program will remain in effect in that trading crowd. If the trading crowd does not participate in the morketing fee at the

[3] The voting procedures previously were described in SR–CBOE–2003–20. *See* Securities Exchange Act Release No. 47957 (May 30, 2003), 68 FR 35035 (June 11, 2003) ("Marketing Fee Voting Procedures Approval Order").

[4] On July 12, 2004, the SEC approved a proposed rule change, SR–CBOE–2004–24, which pertains to the establishment of e–DPMs. *See* Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004).

[5] Upon approval of this proposed rule change, the CBOE intends to file a proposed rule change, pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder, incorporating e–DPMs into the CBOE's existing marketing fee program.

time the tie vote occurs, the marketing fee will not be implemented in the trading crowd at that time.

* * * * *

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 its proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item III 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, the Proposed Rule Change

1. Purpose

On May 30, 2003, the Commission approved a proposed rule change that adopted Interpretation and Policy .12 to CBOE Rule 8.7, setting forth voting procedures that specify how a trading crowd, including the DPM, determines whether or not to participate in the CBOE's marketing fee program.[6] The Marketing Fee Voting Procedures were implemented as a one-year pilot program and expired on May 30, 2004. Although the CBOE has been evaluating whether to make modifications to its marketing fee program, in the interim, the CBOE proposes to re-institute these voting procedures on a pilot basis to expire six months after Commission approval of the proposed rule change. The Exchange represents that these procedures are substantially similar to those previously approved by the Commission before the pilot expired,[7] except that the CBOE proposes that the Marketing Fee Voting Procedures be amended to include e-DPMs in the category of trading crowd members who are eligible to participate in a marketing fee vote, on an option-by-option class basis, and only for those option classes to which they have been appointed.

Eligible Voters in a Trading Crowd

Proposed Interpretation and Policy .12 of CBOE Rule 8.7 provides that eligible trading crowd members include:

(1) Those Market-Makers who have transacted at least 80% of their Market-Maker contracts and transactions in each of the three immediately preceding calendar months in option classes traded in the trading crowd and who continue to be present in the trading crowd in the capacity of a Market-Maker at the time of the vote; [8]

(2) The DPM; and

(3) Any e-DPM, for those option classes to which the e-DPM has been appointed.

Process To Request a Vote

The CBOE proposes that the DPM, e-DPM or any other eligible trading crowd member may request that a vote be held by submitting a written request to that effect to the Secretary of the CBOE. The CBOE will provide at least ten calendar days posted notice to the trading crowd and will provide written notice to the e-DPM of the time and date of the vote. The Secretary of the CBOE will verify that the member requesting a vote is an eligible trading crowd member and will keep the identity of such individual confidential.

Trading Crowd Participating in Marketing Fee Program

Proposed Interpretation and Policy .12 to CBOE Rule 8.7 provides that a trading crowd will be deemed to have indicated that it does not wish to continue participating in the marketing fee program for one or more of the option classes located at that station only if: (i) The question is put to a vote of the eligible trading crowd members; [9] (ii) a majority of the eligible trading crowd members participate in the vote; [10] and (iii) a majority of the votes cast are in favor of not participating in the marketing fee program. In the event the vote of the members of the trading crowd is tied, the marketing fee program will remain in effect in the option class or classes in that trading crowd for the next three consecutive months.

Trading Crowd Not Participating in Marketing Fee Program

According to the CBOE, twenty days after a trading crowd votes not to participate in the marketing fee program, any eligible trading crowd member may then request that another vote be held to determine whether the trading crowd should participate in the marketing fee program.[11] In this case, if a majority of the votes cast are in favor of participating in the marketing fee program, the trading crowd will be deemed to have indicated that it wishes to participate in the marketing fee program and the marketing fee program will be in effect in that trading crowd for the next three consecutive months. In the event the vote of the members of the trading crowd is tied, the trading crowd will be deemed to have indicated that it does not wish to participate in the marketing fee program.

The CBOE further states that these Marketing Fee Voting Procedures are substantially similar to procedures adopted by the American Stock Exchange ("Amex").[12]

Moreover, the CBOE proposes that a marketing fee oversight committee of the CBOE shall determine administrative procedures for conducting the vote. If a payment accepting firm materially changes its execution status or a DPM transfers its DPM appointment to a separate organization pursuant to CBOE Rule 8.89, any eligible trading crowd member may then request that a vote be held to determine whether or not the trading crowd should participate in the marketing fee program by conducting a vote pursuant to the above procedures.

2. Statutory Basis

The CBOE believes that, because the reinstated Interpretation and Policy .12 to CBOE Rule 8.7 will provide fair and orderly procedures for the administration of any marketing fee program, the proposed rule change is

[6] *See* Securities Exchange Act Release No. 47948 (June 1, 2003), 68 FR 33749 (June 5, 2003) (SR–CBOE–2003–19).

[7] *See* Marketing Fee Voting Procedures Approval Order, *supra* note 3.

[8] The CBOE states that it routinely monitors Market-Maker trading activity for purposes of determining compliance with Interpretation and Policy .03 of CBOE Rule 8.7, relating to appointment and in-person trading requirements. Additionally, the Exchange has committed to monitor Market-Maker trading activity for purposes of determining compliance with the electronic quoting requirements adopted in SR–CBOE–2002–05 (the Hybrid Trading System). *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003). As such, the CBOE believes that it has the capability to determine who constitutes an "eligible trading crowd member" for purposes of the proposed Marketing Fee Voting Procedures. Furthermore, the CBOE believes that the trading activity and in-person requirements of Interpretation and Policy .12 of CBOE Rule 8.7 ensure that only those members who are currently engaged as Market-Makers in that trading crowd, and who have concentrated their activity in that trading crowd over the last three months, may participate in the vote.

[9] The DPM and any e-DPM appointed to the option class are considered to be eligible trading crowd members and, as such, may (but are not required to) participate in the vote. The DPM and any e-DPM are each entitled to only one vote.

[10] To the extent the CBOE's rules permit a Market-Maker affiliated with an e-DPM to trade in a station, that Market-Maker is eligible to vote pursuant to CBOE Rule 8.7, Interpretation and Policy .12(a)(ii).

[11] The CBOE notes that actual votes may only be held once every thirty days. Because there is a ten calendar day notice period prior to a vote, however, an eligible trading crowd member may request a vote twenty days after the preceding vote.

[12] *See* Amex Rule 958.11. *See* Securities Exchange Act Release Nos. 48577 (September 30, 2003), 68 FR 57943 (October 7, 2003) (File No. SR–AMEX–2003–80); and 49488 (March 26, 2004), 69 FR 17460 (April 2, 2004) (File No. SR–AMEX–2004–18).

consistent with and furthers the objectives of Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of the exchange are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–2004–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–47. 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 Room. Copies of the 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–2004–47 and should be submitted on or before August 27, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change as a Pilot Program

After careful consideration, 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.[14] Specifically, the Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of the 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 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 believes that this proposal, which allows the appropriate eligible trading crowd members to determine whether to participate in the CBOE's marketing fee program, promotes member participation in the procedures of the CBOE. Further, the Commission notes that the proposed Marketing Fee Voting Procedures are substantially similar to the voting procedures previously in place at the Exchange on a pilot basis and to those procedures of another self-regulatory organization, which have previously been approved by the Commission.[16]

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the proposed Marketing Fee Voting Procedures correspond to the voting procedures that had been in place at the Exchange until recently. Moreover, the CBOE is proposing to institute these procedures as a pilot program that will expire six months from the date of this order. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[17] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–CBOE–2004–47) be approved until January 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17956 Filed 8–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50133; File No. SR–NYSE–2004–36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending the NYSE Constitution To Permit Certain Individuals To Serve on the Regulation, Enforcement & Listing Standards Committee

August 2, 2004.

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 July 2, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Exchange filed Amendment No. 1 to the

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Amex Rule 958.11, *supra* note 12.

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

proposed rule change on July 27, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending Article IV, Section 12(b)(1) of its Constitution ("NYSE Constitution"). The proposed amendment will permit the Board to appoint individuals to serve on the Regulation, Enforcement & Listing Standards Committee ("RELS Committee") who have served previously on either the RELS Committee or the Committee for Review but who are neither Directors nor members of the Board of Executives.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The text of thE proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

Article IV. Board of Directors

Sec. 12. Standing Committees. The Standing Committees and their respective Chairmen shall be appointed by the Board at its annual organizational meeting. The Board shall adopt for each Standing Committee a charter consistent with the duties prescribed in the subsections below, and including such additional duties as may be considered appropriate and not inconsistent with this Constitution. Each Standing Committee shall have the authority to engage independent legal counsel and other advisors as it determines necessary to carry out its duties, but may not use counsel or other advisors who advise Exchange officers or employees.

* * * * *

(b) Joint Committees

(1) The Regulation, Enforcement & Listing Standards Committee shall be composed of both directors (other than the Chief Executive Officer) and Board of Executives members (including at least one Industry Member of the Board of Executives), as selected by the Board *and, to assure continuity, may also include prior members of either this Committee or the Committee for Review (as hereinafter defined) who are neither directors nor members of the Board of Executives, also as selected by the Board;* provided, however, that a majority of the members of [such] this [c]*C*ommittee[s] voting on a matter subject to a vote of [such] *this* Committee shall be directors. *The* [Such] [c]*C*ommittee shall report to the Regulatory Oversight & Regulatory Budget Committee and shall (i) review and provide general advice with respect to the Exchange's programs for market surveillance, member and member organization regulation and enforcement, and the listing and de-listing of securities, and (ii) hear appeals of disciplinary determinations and determinations to de-list a listed company. *The term "Committee for Review" shall refer to the predecessor of this Committee under the Exchange's governance structure in effect prior to December 17, 2004.*

* * * * *

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 17, 2003, the Commission approved changes to the NYSE Constitution that restructured the Exchange's governance architecture to separate the regulatory and marketplace functions, among other changes. [4] As part of the new architecture, the Exchange now has both a Board of Directors ("Board"), which includes six to twelve independent directors elected by the membership, and a Board of Executives, which consists of constituent representatives. The directors are elected annually and the members of the Board of Executives are appointed annually. Under the Exchange's previous governance structure, directors had two-year, staggered terms.

Among the committees constituted under the new architecture is the RELS Committee, which, among other duties, hears appeals from disciplinary decisions by the Exchange's Hearing Panels and delisting determinations by the Exchange's Listings & Compliance unit. The new annual election and appointment cycle allows for the possibility of a complete or significant turnover in the membership of the RELS Committee. Yet, the appellate work of the committee requires knowledge of the Exchange's procedures and an understanding of precedents that make some continuity from year to year highly desirable.

The Exchange advises that it recognized this turnover issue in the context of last year's revisions to its governance structure and included as Article XVI of the NYSE Constitution a transition period that permitted the Board to appoint to the RELS Committee former members of the Board who had served on the predecessor Committee for Review.[5] This transitional authority expired at this year's annual meeting on June 3, 2004.

So that the Board may continue to have this authority, the proposed rule change in effect eliminates the sunset date and moves this authority to Article IV, Section 12(b)(1) of the NYSE Constitution, which is where the Constitution constitutes the RELS Committee. According to the Exchange, the proposed rule change also recognizes that the requisite knowledge, experience and understanding will in due course reside not simply in former members of the predecessor Committee for Review, but also in former members of the RELS Committee itself. In addition, the Exchange proposes to revise a provision in Article IV, Section 12(b)(1) of the NYSE Constitution to refer to "this Committee" rather than "such Committees."[6]

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 26, 2004 ("Amendment No. 1"). In Amendment No. 1, NYSE marked the proposed rule text to show changes to its Constitution that it failed to reflect in the original proposal.

[4] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003).

[5] *See* NYSE Constitution, Article XVI.

[6] The Commission notes that this provision expressly requires that the majority of the members of the RELS Committee voting on a matter subject to a Committee vote must be members of the Board, *i.e.*, independent directors. Moreover, the Commission points out that Article IV, Section 14 of the NYSE Constitution, among other things, expressly provides that the Board may not delegate, and no committee may re-delegate, to the Board of Executives or to any committee not consisting solely of directors authority to act on any subject matter described in Article IV, Section 12(a) (*i.e.*, Standing Committee duties) or (b)(1) (*i.e.*, RELS Committee duties), except by effecting a rule change within the meaning of Section 19(b)(1) of the Act.

requirement under Section 6(b)(1)[7] that an exchange be organized and have the capacity to be able to carry out the purposes of the Act, under Section 6(b)(5)[8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and under Section 6(b)(7)[9] that the rules of the exchange provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received. However, members of the exchange were given notice of the proposed change in a Proxy Statement issued on April 30, 2004.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-NYSE–2004–36 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NYSE–2004–36. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE–2004–36 and should be submitted on or before August 27, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

NYSE has asked the Commission to approve the proposal on an accelerated basis to make the proposal effective on or before August 2, 2004, in order that the existing transitional committee members can participate in the appeals scheduled for that day. The Commission notes that it previously approved a proposal for former members of the Committee for Review where neither directors or members of the Board of Executives to serve on the RELS Committee during the transition period,[10] and that the current proposed rule change seeks an extension of that policy to former members of the RELS Committee, as well as members of the Committee for Review.

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,[11] applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5)[12] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and with the requirements of Section 6(b)(7)[13] that the rules of the exchange provide a fair procedure for the disciplining of members and persons associated with members. The Commission notes that the RELS Committee's responsibility for hearing appeals from disciplinary panels and delisting determinations can foster the need for the Committee to have members who are knowledgeable about the Committee's procedures and familiar with its precedents and deliberations. The Commission notes that the new annual election and appointment cycle for members of the Board and the Board of Executives, respectively, could hinder the RELS Committee from retaining experienced and knowledgeable members. The Commission believes that allowing former members of the Committee for Review and RELS Committee to participate on future RELS Committees should help ensure the continuity of the RELS Committee by ameliorating the effect that the annual turnover of members of the Board and Board of Executives otherwise could have on the RELS Committee.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the next RELS Committee meeting to hear appeals is on August 2, 2004. The Exchange has requested accelerated approval in order to allow prior Committee for Review Members and RELS Committee members to serve on the current RELS Committee and hear appeals scheduled for that day. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[14] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR-NYSE–2004–36), as amended, is hereby approved on an accelerated basis.

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(7).

[10] *See supra* note 4.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(7)

[14] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18001 Filed 8–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50129; File No. SR–Phlx–2004–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 thereto, by the Philadelphia Stock Exchange, Inc. Relating to Retroactive Application of Permit Holder Fees

July 30, 2004.

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 June 30, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On July 12, 2004, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to retroactively apply its recent amendment to its schedule of fees and Charges ("Fee Schedule Amendment").[4]

In the Fee Schedule Amendment, the Exchange adopted an "other" permit fee category to address the limited situations where a permit holder might not fit within any of the existing permit fee categories.[5] The Exchange had found that a few permit holders did not fit in any existing permit fee categories, and, consequently, no permit fee was applicable. For example, a member organization may be holding its permit solely to be able to reflect its status as a Phlx member organization on its letterhead, which is common in the securities industry. That member organization would not have qualified for any of the existing permit fee categories and, therefore, would not have been subject to a permit fee at all. The Exchange is proposing to retroactively apply the "other" permit fee category from February 2, 2004 through April 30, 2004, the period prior to the adoption of the "other" permit fee category, in order to collect permit fees from member organizations that previously had not been subject to a permit fee.

Additionally, the Exchange proposes to retroactively apply its billing policy set forth in the Fee Schedule Amendment, which set the date of notification for terminating a permit as the date that the permit fee billing would cease. From February 2, 2004 through April 30, 2004, the period prior to the Fee Schedule Amendment, the effective date of the posting period was used to determine the termination date for a permit, resulting in some member organizations being billed for an extra month.

Further, the Exchange is proposing to retroactively assess only one monthly permit fee in certain limited situations where two monthly permit fees otherwise would be imposed. Prior to the Fee Schedule Amendment, if a permit was transferred, other than if the transfer occurred within the permit holder's member organization,[6] both member organizations would have been assessed a billing fee. For example, if the permit holder transferred from one member organization to another unrelated member organization in the same month, both member organizations were assessed a permit fee in the same billing period. In addition, when a permit holder became associated with another member organization as a result of a merger, partial sale of the current member organization, or other business combination, a new permit was issued but a monthly permit fee for the new permit would have also been assessed in these limited situations. This policy of assessing only one permit fee when a permit holder becomes associated with another member organization is noted in the Fee Schedule Amendment and, pursuant to the proposed rule change, would be retroactively applied from February 2, 2004 to April 30, 2004.

The text of the proposed rule change, as amended, is available at the Exchange and at the Commission.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change, as amended, is to retroactively apply the "other" permit fee category and the other recently adopted permit fee billing practices back to the initiation of permit fee billing on February 2, 2004 to more fairly apply Exchange permit fee policies to each permit holder and their respective member organizations. Retroactively applying the recently effective "other" category of permit fees should ensure that each permit holder has been billed an appropriate permit fee from February 2, 2004, the initial date of permit fee billing. Additionally, allowing monthly billing of permit fees to cease at the time a member notifies the Exchange, as opposed to waiting for the effective date of the posting and notice requirements, should avoid unnecessarily billing a member for permit fees for a month during which their permit was terminated. Also, charging only one permit fee for the month in which a merger or other business combination occurs should avoid unfairly double billing for a permit fee to a permit holder changing affiliation due to a merger or other business organizational changes.

2. Statutory Basis

The Exchange believes that its proposal to retroactively apply its

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Murray L. Ross, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated July 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange removed references in two footnotes to the proposed date that the retroactive fees would take effect.

[4] *See* Securities Exchange Act Release No. 49856 (June 15, 2004), 69 FR 3441 (June 21, 2004) (SR–Phlx–2004–32) (adopting a new category of permit holders for billing purposes; establishing the date of notification of terminating a permit as the date that permit fee billing will cease; and establishing that only one monthly permit fee would be assessed in certain limited situations where two monthly permit fees would otherwise be imposed).

[5] The "other" permit fee category is intended to apply to permit holders who solely qualify their respective member organization.

[6] If the permit holder transfers the permit to another individual within the same member organization, only one monthly permit fee is assessed for that permit.

amended schedule of dues, fees and charges is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Sections 6(b)(4)[8] and 6(b)(5)[9] of the Act in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and is designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve such rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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–Phlx–2004–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–39. 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, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2004–39 and should be submitted on or before August 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18002 Filed 8–5–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Environmental Policy Act Procedures

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of proposed change in procedures.

SUMMARY: SBA seeks comment on its proposed revisions to its procedures implementing the National Environmental Policy Act specifically relating to loans made under these business loan assistance programs. SBA also seeks comments on a proposed assessment of the effects of the Agency's 7(a) business loan program and 504 certified development company program upon the environment. These changes are necessary to reflect changes in SBA's loan programs.

DATES: Comments on both the revised procedures and the PEA must be received on or before October 5, 2004.

ADDRESSES: Comments should be addressed to Eric S. Benderson, Associate General Counsel, Office of General Counsel, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric S. Benderson, Associate General Counsel (202) 205–6636; *eric.benderson@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA has prepared a Programmatic Environmental Assessment ("PEA") to evaluate the effects of the Agency's 7(a) business loan and 504 certified development company programs ("small business loan assistance programs") on various environmental resources. The PEA finds that the cumulative effects of these business loan assistance programs do not have a significant adverse impact on these resources. To obtain a copy of this PEA, you may send a request to *gary.fox@sba.gov* or visit SBA's Web site at *http://www.sba.gov/library/reportsroom.html.* Interested parties may submit comments on this PEA to the above address.

Under the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321 *et. seq.*, and the implementing regulations promulgated by the Council on Environmental Quality ("CEQ"), 40 CFR part 1500, agencies must adopt procedures for determining the environmental effects of major Federal actions. SBA's procedures implementing NEPA are set forth in SBA Standard Operating Procedure ("SOP") 90–57. These procedures were originally published in 45 FR 7358, February 1, 1980, and are available for review at *http://www.sba.gov/library/soproom.html.*

SBA's two primary business loan assistance programs are the 7(a) Guaranteed Loan Program ("7(a) Program"), implemented pursuant to the Small Business Act, 15 U.S.C. 636(a), and the 504 Certified Development Company Program ("504 Program"), implemented pursuant to Title V of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 695. Under the 7(a) Program, SBA guarantees up to 85 percent of loan amount (depending upon loan size) to encourage commercial lenders to make loans to eligible and creditworthy small businesses that cannot obtain financing on reasonable terms through normal

private lending channels. SBA does not use any of its own funds unless there is a default by the borrower in paying the loan. If a default occurs, SBA pays its guaranty obligation to the lender. Lenders then undertake the liquidation of collateral given by the borrower to secure the loan, and appropriate debt collection actions against the borrower, to recover any loss on the loan.

Under the 504 Program, which is a jobs-creation program, SBA assists small businesses seeking long-term, fixed-rate financing to acquire or improve capital assets. SBA implements the program through 268 Certified Development Companies ("CDCs"), which are private, mostly non-profit corporations licensed to promote local and community economic development. Typically, a 504 project is funded by three sources: (1) A loan, secured with a senior lien, from a private-sector lender for 50 percent of the project cost; (2) an equity contribution from the borrower of at least 10 percent of the project cost; and (3) a loan covering up to 40 percent of the total cost, which is funded from proceeds from the sale to investors of a debenture issued by a CDC, payment of which is guaranteed by the SBA. (Although SBA does not actually guarantee the payment of a 504 loan, but rather the debenture which funds the loan, these loans are referred to below as guaranteed loans for the sake of convenience.) SBA does not use any of its own funds unless there is a default by the borrower in paying the debenture-funded loan, in which case the Agency pays the outstanding balance owed on the debenture to the investors. After a default, liquidation of collateral given by the borrower to secure the loan, and appropriate debt collection actions against the borrower, are undertaken to recover any loss on the loan.

Under SOP 90–57, SBA's issuance of guaranties, given in connection with loans made under the 7(a) Program and in connection with debentures for local and community development loans under the 504 Program, are categorically excluded from NEPA except that an environmental assessment may be required in those cases where loan proceeds used for construction and/or purchase of land exceed $300,000. SOP 90–57, ¶¶ 7h, 7k. SBA's NEPA procedures, which have not been revised since their adoption in 1980 despite significant changes in SBA's small business loan assistance programs, are outdated. For the reasons discussed below, SBA proposes to revise its NEPA procedures.

Background

Small businesses make up a major sector of the American economy and play an essential role in maintaining the Nation's system of private enterprise. The Small Business Act, which created the SBA, provides as follows:

> The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, * * * and to maintain and strengthen the overall economy of the Nation.

15 U.S.C. 631, *et seq.*

According to a report published by the SBA Office of Advocacy, *Small Business by the Numbers* (May 2003), America's 22.9 million small businesses employ more than 50 percent of the private work force, generate more than 50 percent of the nation's non-farm private gross domestic product, and generate 60 to 80 percent of net new jobs annually. Small businesses create opportunities for women, minorities, veterans and the handicapped to enter the economic mainstream, and play an important role in technological innovation, helping the U.S. to achieve a high standard of living, and providing a diversity of products and services.

One of the many ways that Congress has empowered SBA to fulfill the Agency's statutory mission to "aid, counsel and assist small businesses," 15 U.S.C. 631, is through the SBA small business loan assistance programs—the 7(a) and 504 Programs. These programs allow SBA to assist small businesses, including many minority and women-owned businesses, as well as those owned by veterans and those with disabilities, by encouraging lenders to provide loans to small businesses that would not otherwise qualify for financial assistance from private sources.

Several features of SBA's loan assistance programs bear emphasis:

(1) In over 60 percent of loans stemming from the Agency's 7(a) and 504 small business loan assistance programs, the lender approves the loan and funds it without SBA's prior review and approval. In fact, based upon current trends to streamline these programs, most of SBA's business loan guaranties likely will be made in this way in the near future.

(2) It is of paramount importance that loan approval be accomplished as quickly as possible given the needs of the small businesses applying for the loans and the timeframes for loan approval sought by our participating lenders.

(3) In the vast majority of cases the loan applicant comes to the lender with an existing business that is in need of specific funding, or with a definite business plan, both as to the business location and the use of proceeds. SBA plays no role in determining either. In this regard, SBA is asked for its guaranty at the end of the process, after the small business owner has determined the purpose and amount of the financing.

(4) It is the lender that applies for the guaranty, not the small business, and SBA generally has little or no contact with the small business during the loan approval process.

(5) An SBA-guaranteed loan, though quite significant to a small business borrower, when viewed as a Federal expenditure, is relatively small. Approximately three-quarters of all guaranteed loans provided by SBA in Fiscal Year 2002 pertained to loans of less than $300,000. In fact, the average size of an SBA-guaranteed loan in FY 2002 was $237,907.

(6) In addition, approximately 75 percent of all 7(a) loans, and 70 percent of all 504 loans, are made to borrowers involved in wholesale or retail businesses, or the service industry.

(7) Further, less than 13 percent of 7(a) or 504 borrowers are located in rural areas, and the vast majority of SBA loans do not finance new construction.

Accordingly, the nature of SBA's small business loan assistance programs, in which SBA's role is secondary to that of the lenders, expedited loan approval is required, guaranteed loans of relatively low dollar value are involved, and existing site locations or ones that have already been planned, makes a loan-by-loan assessment under NEPA impractical and unnecessary. As discussed above, SBA has undertaken a PEA to determine the extent of any environmental impact of its programs. A primary focus of this assessment was to determine any possible impact SBA small business loan assistance programs may have on urban sprawl, since that question has been raised by certain environmental groups. As discussed in the PEA, SBA has determined that the Agency's small business loan assistance programs do not promote urban sprawl. Such a

conclusion is not surprising in light of the fact that small business follows economic development because of the need for customers or clients. But even if this were not the case, the Agency's small business loan assistance programs prohibit the use of loan proceeds for speculative real estate ventures or for real estate development. *See* 13 CFR 120.130.

In the absence of any other known controversy regarding the impact of the business loan programs other than an alleged contribution to urban sprawl, the PEA also undertakes a generalized review of the impacts of the small business loan assistance programs upon other components of the environment. As discussed therein, SBA has determined that the cumulative effects of these programs upon the environment are very limited.

Legal Analysis

Having reviewed SBA's existing NEPA procedures as they relate to the Agency's small business loan assistance programs, and having carefully considered the provisions of NEPA, applicable regulations, the relevant case law developed during the twenty-three years since SBA's rules were first promulgated, and the current nature of SBA's various small business loan assistance programs, SBA has concluded that its current NEPA procedures should be modified. The Agency has determined that NEPA reviews pertaining to individual business loan guaranties need not be undertaken because an SBA guaranty of a business loan does not constitute a major Federal action significantly affecting the quality of the environment and, thus, does not come within the purview of NEPA. However, because of questions raised as to the programmatic impact of those loan guaranties, particularly as they may relate to urban sprawl, the Agency has reviewed its small business loan assistance programs to determine what cumulative impact, if any, they may have on the environment. As set forth in SBA's PEA, the Agency's small business loan assistance programs do not have a significant effect upon urban sprawl or the environment.

Under NEPA, 42 U.S.C. 4332(2)(C), all agencies of the Federal Government are directed to include in every recommendation or report on "major Federal actions significantly affecting the quality of the human environment," a detailed statement setting forth the environmental impact of the proposed action, any unavoidable adverse environmental effects of the proposed action, alternatives to the proposed action, and certain other data. From the outset, however, the proper interpretation of the critical words just quoted, and, thus, the actual scope of NEPA's applicability, has been subject to each federal agency's interpretation in the context of particular proposed programs and actions, informed by numerous judicial decisions.

NEPA's procedural requirements bind only the Federal government. NEPA does not apply to the actions of state, local, or private entities unless the Federal government has, in some manner, become sufficiently involved in a particular undertaking of the state, local, or private entity so as to "federalize" that project for purposes of NEPA. The CEQ regulations implementing the procedural provisions of NEPA and numerous judicial decisions provide guidance for determining what level of Federal involvement is necessary before the requirements of NEPA must be met—*i.e.*, before the Federal involvement will be deemed sufficient to qualify the subject project as a "major Federal action." The CEQ regulations define "major Federal action" as actions "with effects that may be major which are potentially subject to Federal control and responsibility."

Case law has articulated the meaning of this standard in a number of different factual contexts. It is clear that there are Federal activities and actions that will not be deemed sufficiently significant as to amount to "major Federal action" under the provisions of NEPA. *Ka Makani 'O Kohala Ohana Inc.* v. *Water Supply*, 295 F.3d 955, 960 (9th Cir. 2002); *Atlanta Coalition on the Transportation Crisis, Inc.* v. *Atlanta Regional Commission*, 599 F.2d 1333, 1347 (5th Cir. 1979). According to the *Ka Makani* Court, in order to determine whether a particular Federal action is sufficiently major so as to trigger NEPA's requirements, one must "look 'to the nature of the federal funds used and the extent of federal involvement.'" 295 F.3d at 960 (quoting *Sierra Club* v. *Penfold*, 857 F.2d 1307, 1314 (9th Cir. 1988). Another court stated that "Whether a particular federal action is 'major' depends on the amount of federal funds expended, the number of people affected, the length of time consumed, and the extent of government planning involved." *Como-Falcon Coalition, Inc.* v. *United States Department of Labor*, 465 F. Supp. 850, 857 (D. Minn. 1978), *aff'd*, 609 F.2d 342 (8th Cir. 1979), *cert. denied*, 446 U.S. 936 (1980). And one case, *Township of Ridley* v. *Blanchette*, 421 F. Supp. 435 (E.D. Pa. 1976) observed:

> Those cases which have found the existence of major federal action have ordinarily involved highway extensions, large structures which alter the neighborhood, major dams or river projects, and other projects which can generally be characterized as involving sizable federal funding (over one-half million dollars, and usually well over one million), large increments of time for the planning and construction stages, the displacement of many people or animals, or the reshaping of large areas of topography.

Id. at 446.

With respect to the funding of a project by a Federal agency, the courts have recognized that significant Federal funding can transform a non-federal project into a "major Federal action." *Ka Makani*, 295 F.3d at 960; *Sierra Club* v. *U.S. Fish and Wildlife Service*, 235 F. Supp. 2d 1109, 1121 (D. Ore. 2002) ("Given the overwhelming percentage of federal dollars involved, and the fact that the amount itself, regardless of the percentage it represents, is more than $3 million, the federal funding contribution alone is probably sufficient to 'federalize' the project."). But regardless of the amount of Federal money involved in a specific Federal project, the key test for determining the presence of a "major Federal action" is whether there is a significant degree of Federal involvement with, and control over, the subject project. *See, e.g.*, *The Environmental Rights Coalition, Inc.* v. *Austin*, 780 F. Supp. 584, 600–01 (S.D. Ind. 1991).

As noted by the Fifth Circuit,

> Determining whether a program is sufficiently "federal" to render it subject to NEPA will often entail analysis of the amount and significance of federal aid. * * * And in some circumstances, perhaps, the federal character of a state or local project can be established merely by the presence of substantial federal assistance. * * * But we think the presence of federal financial assistance is generally just one factor in the analysis of whether there is sufficient federal control over, responsibility for, or involvement with an action to require preparation of an EIS.

Atlanta Coalition, 599 F.2d at 1347. And the need for Federal control over a project before it will be deemed a "major Federal action" is reflected in numerous cases pertaining to NEPA. *Ka Makani*, 295 F.3d 955, 960 and 961("The USGS and HUD * * * lacked the degree of decision-making power, authority, or control over the [project] needed to render it a major federal action." *Id.* at 960; "Because the final decision-making power remained at all times with [the state agency], we conclude that the USGS involvement was not sufficient to constitute 'major federal action.'" *Id.* at 961); *Mayaguezanos Por La Salud Y El*

Ambiente v. *U.S.*, 198 F.3d 297, 302 (1st Cir. 1999) ("Like the Fourth Circuit, we look to whether federal approval is the prerequisite to the action taken by the private actors and whether the federal agency possesses some form of authority over the outcome."); *United States* v. *Southern Florida Water Management District*, 28 F.3d 1563, 1572 (11th Cir. 1994), *cert. denied sub nom. Western Palm Beach County Farm Bureau, Inc.* v. *U.S.*, 514 U.S. 1107 (1995) ("The touchstone of major federal activity constitutes a federal agency's authority to influence nonfederal activity. '[T]he federal agency must possess actual power to control the nonfederal activity.' *Sierra Club* [v. *Hodel*, 848 F.2d 1068, 1089 (10th Cir. 1988)]."); *Sugarloaf Citizens Association* v. *FERC*, 959 F.2d 508, 512 (4th Cir. 1992) ("As stated by the Tenth Circuit, 'the federal agency must possess actual power to control the non-federal activity.' Sierra Club v. Hodel, 848 F.2d 1068, 1089 (10th Cir. 1988)."); *Save Barton Creek Association* v. *Federal Highway Administration*, 950 F.2d 1129, 1134–35 (5th Cir.), *cert. denied*, 505 U.S. 1220 (1992). Indeed, in one recent case, *Riverfront Garden District Association, Inc.* v. *City of New Orleans*, 2000 WL 1789952 (E.D. La. Dec. 6, 2000), although the Federal Highway Administration paid $15,500,000 of the $88,000,000 cost of the subject project, the Court nonetheless concluded,

> While the amount of federal money is not insignificant, the Fifth Circuit's focus on the ability to influence or control the outcome in material respects in determining whether a major federal action exists convinces this Court that the [project] is not a "major federal action." * * * The federal government could not exercise discretion and control over the design, location or choice of alternatives for the nonfederally funded portions.

p. 6.

As noted above, SBA does not provide loan proceeds directly to borrowers. It provides guaranties to lenders, in order to encourage them to provide loans to small businesses. Proceeds from these loans are used by the borrowing businesses for working capital, to purchase inventory, machinery, or equipment, or to purchase real estate for use in the business or fund the cost of business expansion. And, regardless of how the loan proceeds are used by borrowers benefiting from SBA's small business loan assistance programs, the amount of the federal guaranteed-loan remains relatively low, as already noted, averaging only approximately $237,907 in amount. Accordingly, SBA has concluded that the size of the guaranties which it extends (or which are placed on loans by lenders authorized to do so without prior SBA consent) are not of sufficient magnitude to constitute major Federal actions under NEPA.

Even more significant, however, is the clear and irrefutable fact that SBA does not have control over the business activities of the private borrower, has no responsibility for the borrower's business activities, and has no authority over the outcome of the borrower's efforts. Thus, SBA borrowers approach lenders with business plans which they have formulated without SBA direction; they have chosen, or choose, the location of their businesses without directives from SBA; SBA does not direct or even supervise the efforts of borrowers to operate, modify, or expand their businesses; SBA has no role whatsoever in the day-to-day activities of the borrowers; and SBA does not control a borrower's ability to succeed in its business activities. Thus, SBA has concluded that the absence of a significant degree of Agency involvement with, or control over, borrowers' projects compels a determination that SBA's role with regard to those projects does not constitute a "major Federal action" for purposes of NEPA.

Given the relatively small magnitude of the dollar amount of SBA-guaranteed loan funds received by individual borrowers, and in light of the fact that SBA does not have a significant degree of involvement with, or control over, the projects of the borrowers, it is quite appropriate that SBA's actions with regard to any particular loan should not be deemed major Federal actions for purposes of NEPA, and that SBA should not be subject to the requirements of NEPA in connection with individual loans made in connection with its small business loan assistance programs. As has been observed by the District Court for the Southern District of New York, "* * * it would make no sense to require federal agencies to assess the environmental impact of private actions over which they have no control, solely on the basis of the incidental effects of federal action on the private action." *Landmark West!* v. *United States Postal Service*, 840 F. Supp. 994, 1009 (S.D.N.Y. 1993), *aff'd*, 41 F.3d 1500 (2d Cir. 1994) (Table). Further, as noted by the Fourth Circuit in *Sugarloaf Citizens Association*,

> Only proposals for a "major" federal action * * * require review by an agency under NEPA. "Requiring an EIS for anything less would needlessly hinder the Government's ability to carry on its myriad programs and responsibilities in which it assists, informs, monitors, and reacts to activities of individuals, organizations, and states, but in which Government plays an insubstantial role." *NAACP* v. *Medical Center, Inc.*, 584 F.2d 619, 634 (3d Cir. 1978).

959 F.2d at 512. Finally, the observation of the Court in Township of Ridley is of particular significance:

> In sum, "major" is a term of reasonable connotation, and serves to differentiate between projects which do not involve sufficiently serious effects to justify the costs of completing an impact statement, and those projects with potential effects which appear to offset the costs in time and resources of preparing a statement. 421 F. Supp. at 446.

For loans made under the Preferred Lender ("PL") or Premier Certified Lender (PCL) Programs, there is an additional reason that such loans would not come within the purview of NEPA. Under the PL Program, pursuant to the Small Business Act, SBA delegates responsibility to experienced and qualified lenders (generally larger lending institutions) to issue an SBA guaranty on a loan without prior approval by SBA. Under Section 7(a)(2)(C) of the Small Business Act, 15 U.S.C. 636(a)(2)(C), Congress has defined the PL Program as a "program established by the Administrator * * * under which a written agreement between the lender and the Administration delegates to the lender * * * complete authority to make and close guaranteed loans with a guaranty from the Administration without obtaining the prior specific approval of the Administration * * *" (emphasis added). PL Program lenders, thus, have delegated authority to make SBA-guaranteed loans without any approval from SBA.

Under the PCL Program, pursuant to the Small Business Investment Act of 1958, as amended, SBA delegates the responsibility to experienced and qualified CDCs to issue an SBA guaranty on a loan without prior approval by SBA. 15 U.S.C. 697e. As to the PCL Program, Congress has mandated that guaranteed loans made by PCLs shall not include SBA "review of the decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation." 15 U.S.C. 697e.

Thus, the guaranteed loans made under SBA's PL and PCL Programs are extended without prior SBA review or consent. Those guaranteed loans involve decisions by private sector borrowers to apply for guaranteed loans from private commercial lenders, and unilateral determinations by those lenders to loan their own money, subject to an SBA guaranty pertaining to a 7(a) loan or 504 debenture.

The legislative history of NEPA reflects congressional intent that the

statute not apply if "the existing law applicable to such agency's operations expressly prohibits or makes full compliance with one of the directives impossible." H. Conf. Rep. No. 765, 91st Cong., 1st Sess. (1969), reprinted in 1969 U.S.C.C.A.N. 2767, 2770 (as quoted by *Douglas County, Or.* v. *Babbitt,* 48 F.3d 1495, 1502 (9th Cir. 1995), *cert. denied,* 516 U.S. 1042 (1996)). In interpreting this legislative history, the Supreme Court concluded that "where a clear and unavoidable conflict in statutory authority exists, NEPA must give way." *Flint Ridge Dev. Co.* v. *Scenic Rivers Ass'n,* 426 U.S. 776, 791 (1976). Such a conflict exists with respect to the PL and PCL programs. It would not be possible for SBA to perform an environmental assessment or environmental impact statement under NEPA for PL and PCL Program guaranteed loans when Congress has directed that these guaranteed loans are to be made without any prior approval by SBA. SBA has, thus, determined that the statutory authority for these programs constitutes a clear and unavoidable conflict which compels the conclusion that they are not subject to NEPA.

Because of questions as to the possible cumulative impact of SBA's business loan programs upon the environment, SBA has undertaken a PEA to determine what impact, if any, the small business loan assistance programs themselves have on the environment.

Discussion of Alternatives

This Section describes the alternatives considered in revising SBA's NEPA procedures, and provides a basis for the choice of the preferred alternative. The "No Action Alternative" is described first. The "Preferred Alternative" is then described. Finally, there is a comparison of the environmental and socioeconomic consequences of the No Action Alternative compared to the Preferred Alternative.

No Action Alternative

Under the "No Action Alternative", SBA would retain its existing NEPA procedures. Under SBA's SOP 90–57, all SBA-guaranteed loans made under the 7(a) Program, and local and community development loans and guaranties (which would include guaranteed loans made under the 504 Program), are categorically excluded from NEPA, except that an environmental assessment may be required in those cases where guaranteed loan proceeds in excess of $300,000 are used for construction under the 7(a) and 504 Programs, and where proceeds in excess of $300,000 are used for the purchase of land under the 7(a) Program. SOP 90–57, ¶¶ 7h, 7k. As discussed above, SOP 90–57 also provides that an environmental assessment may be required if "the loan is in response to a government regulation which pertains to the environmental impact of the business operation," but SBA has not provided such financing for many years. Thus, under the "No Action Alternative," SBA would, when appropriate, perform environmental assessments on individual guaranties of loans or debentures meeting one of these $300,000 thresholds.

Preferred Alternative

Under the Preferred Alternative, SBA would not perform a NEPA review on individual guaranteed loans made under the 7(a) and 504 Programs for the reasons discussed earlier, but would undertake programmatic reviews as deemed appropriate to determine the cumulative impacts of these programs. In addition, as part of its programmatic responsibilities, SBA would make information resources available to participants in these programs regarding matters of environmental concern. SBA would host this "Environmental Classroom" on its website and would provide information on such environmental topics as "Smart Growth," decreasing pollution in the workplace, environmental regulatory compliance and permitting assistance, Superfund, Brownfields and environmental audits.

Environmental/Socio-Economic Consequences

This section discusses the environmental and socio-economic consequences of the No-Action Alternative as compared to the Preferred Alternative. The discussion of environmental and socio-economic consequences is necessarily generalized given the programmatic nature of these alternatives.

As discussed above, SBA has concluded that individual loans made under SBA's small business loan assistance programs are not major federal actions that are subject to NEPA. Under the No-Action Alternative, environmental assessments may be required if proceeds in excess of $300,000 from a guaranteed loan are used for construction under the 7(a) and 504 Programs, or the purchase of land under the 7(a) Program. However, given the Agency's conclusions that the effects of guaranteed business loans over $300,000 do not have a significant impact on the environment, set forth in SBA's PEA, requiring individual environmental assessments of loans in excess of $300,000 that involve construction or the purchase of land would not, therefore, likely result in significantly greater protection of the environment.

As discussed above, Congress has directed that certain lenders have considerable independence to approve loan guaranties with virtually no involvement from SBA. Lender approval of loans without significant SBA involvement accounts for over sixty percent of all 7(a) and 504 loans. Moreover, of the limited number of guaranties that are actually approved by SBA, it is of paramount importance that determinations regarding the issuance of guaranteed loans be accomplished as quickly as possible given the needs of the small businesses applying for the loans and the timeframes for loan approval sought by our participating lenders. Further, although SBA assists a large number of small businesses, including firms owned by minorities, women and veterans, the average loan size is under $240,000, and more than three quarters of all loans are under $300,000.

The Preferred Alternative will most effectively facilitate the prompt issuance of loans, while continuing to ensure that the business loan programs do not negatively impact the environment. Under the Preferred Alternative, SBA would perform programmatic assessments of the effects of the small business loan assistance programs as deemed appropriate. Through the performance of programmatic assessments, SBA could effectively monitor the overall cumulative effects of the small business loan assistance programs. In addition, under the Preferred Alternative, SBA would provide through its website an environmental classroom, which will post relevant information for program participants in order to promote awareness of matters of environmental concern.

On balance, therefore, SBA believes that the consideration of the comparative effects of these alternatives favors the adoption of the Preferred Alternative.

Proposed Revision of NEPA Procedures for the 7(A) and 504 Programs

As discussed above, SBA has determined that there is no legal requirement to perform a NEPA analysis on individual loan guarantees under the 7(a) and 504 Programs. SBA has also conducted a PEA, which has found that the 7(a) and 504 Programs, as a whole, do not have a significant impact on the environment. Therefore, SBA proposes

to revise the SOP provisions relating to these programs, Paragraphs 7h and 7k of SOP 90–57, as set forth below.

As a housekeeping matter, SBA is consolidating NEPA procedures for the 7(a) and 504 Programs into Paragraph 7k of SOP 90–57. Therefore, the title of Paragraph 7h will be revised so that it does not apply to 7(a) loans or 504 loans.

In addition, SBA is revising its NEPA procedures for loans made under the 7(a) and 504 Programs to clarify that a loan-by-loan analysis is not required, and that programmatic assessments will be performed when deemed appropriate. Therefore, SBA proposes to revise paragraph 7k to read as follows:

k. *Loans made under the 7(a) and 504 Programs*

SBA will conduct programmatic analyses of the 7(a) and 504 Programs when it deems appropriate, but the analysis of individual loans is not required. A programmatic analysis may be appropriate when: (1) SBA proposes a major programmatic change to either the 7(a) or the 504 Programs, and there are substantiated indications that either such Program, as changed, would have a significant impact upon the environment; or (2) an outside party brings to SBA's attention specific factual evidence that the 7(a) or 504 Program is having a significant impact upon the environment. SBA will also provide information through its Web site regarding matters of environmental concern to participants in these programs.

(Authority: 40 CFR 1507.3)

Ronald E. Bew,

Associate Deputy Administrator.

[FR Doc. 04–18086 Filed 8–5–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed New Routine Use Disclosure

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new routine use disclosure.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use disclosure applicable to the SSA system of records entitled, *Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058*. The proposed new routine use will allow SSA to verify the name, date of birth and the last four digits of the SSN for state voter registration purposes under section 205(r)(8) of the Social Security Act, as amended by section 303 of the Help America Vote Act (HAVA), Public Law (Pub. L.) 107–252. The proposed new routine use disclosure is discussed in the Supplementary Information section below. We invite public comment on this proposal.

DATES: We filed a report of the proposed new routine use disclosure with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 28, 2004. The proposed routine use will become effective on September 5, 2004, unless we receive comments warranting it not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Carlotta B. Davis, Social Insurance Specialist, Disclosure Policy Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, in Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, e-mail address at *Carlotta.Davis@ssa.gov* or by telephone at (410) 965–8028.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New Routine Use Disclosure

A. General Background

On October 29, 2002, the President signed into law Public Law 107–252, the Help America Vote Act (HAVA) of 2002. Section 303 of HAVA amended section 205(r) of the Social Security Act by adding paragraph (8) which requires the Commissioner of Social Security to enter into agreements with the states and designated territories to assist in verifying information in the voter registration process for elections for federal office. More specifically, this provision of law requires the Commissioner of Social Security to enter into agreement with state officials for the purpose of verifying the following information about voter registrant applicants for whom the last four digits of a SSN are provided instead of a driver's license number:

- Name (including the first name and any family forename or surname),
- Date of birth (DOB) (including the month, day and year), and
- The last four digits of the Social Security number (SSN)).

The verification process will involve the American Association of Motor Vehicle Administrators (AAMVA), State motor vehicle agencies (MVA), and SSA. Under this process, State MVAs will input voter registrants' names, dates of birth, and the last four digits of their SSNs into AAMVA's AAMVAnet system, which in turn will forward the information to SSA for matching with SSA records. After matching the input data with data in SSA records, SSA will return one response code indicating results of the verification, including whether death information is recorded in SSA records, as appropriate.

B. Proposed New Routine Use Disclosure of Data Maintained in the Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058

To implement the provisions of section 205(r)(8) of the Social Security Act (42 U.S.C. 405(r)(8)), SSA must comply with the Privacy Act (5 U.S.C. 552a(b)(3)). To this end, we are proposing to establish the following new routine use providing for disclosure:

To State and Territory Motor Vehicle Administration officials (or agents or contractors on their behalf) and State and Territory chief election officials to verify the accuracy of information provided by the State agency with respect to applications for voter registration, for whom the last four digits of the Social Security number are provided instead of a driver's license number.

The proposed new routine use will appear as routine use numbered 41 in the *Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058* system of records. We are not republishing the notice of this system of records in its entirety at this time. This system of records was last published in its entirety in the **Federal Register** at 63 F.R. 14165, 03/24/98.

II. Compatibility of Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to carry out SSA programs or assist other

agencies in administering similar programs. Section 401.120 of the regulations provides that we will disclose information if required by law. Section 205(r)(8) of the Social Security Act requires the Commissioner of Social Security to verify applicable information to be used by states and territories in their voter registration processes for elections held for federal office. Thus, the proposed routine use is appropriate and meets the relevant statutory and regulatory criteria.

III. Effect of the Proposed Routine Use Disclosure on the Rights of Individuals

The proposed routine use will allow SSA to verify the accuracy of information provided by States and territories with respect to applications for voter registration as required by section 205(r)(8) of the Social Security Act. Section 205(r)(8) of the Social Security Act provides that information provided by the Commissioner of Social Security under agreements with the states and territories is confidential and use of the information is limited to the purpose of verifying voter registrants' information as provided in the agreements. This provision also provides that any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without written authority of the Commissioner, publishes or communicates any information in the individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction shall be fined or imprisoned, or both, as described in section 208 of the Social Security Act. Additionally, we will adhere to all applicable provisions of the Privacy Act when disclosing information. Thus, we do not anticipate that the proposed new routine use will have any unwarranted adverse effect on the rights of individuals about whom data will be disclosed.

Dated: July 28, 2004.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 04–17950 Filed 8–5–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4796]

Bureau of Economic and Business Affairs; List of July 29, 2004, of Participating Countries and Entities (Hereinafter Known as "Participants") Under the Clean Diamond Trade Act of 2003 (Public Law 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice

SUMMARY: In accordance with sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of April 22, 2004 (69 FR 23848–23849, April 30, 2004).

FOR FURTHER INFORMATION CONTACT: Stan Specht, Special Advisor for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State, (202) 647–1713.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the "Act") requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under section 3(2) of the Act, "controlled through the Kimberley Process Certification Scheme" means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 ("Rough Diamond Control Regulations")(68 FR 45777, August 4, 2003).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003, delegates this function to the Secretary of State. Section 3(7) of the Act defines "Participant" as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines "Exporting Authority" as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines "Importing Authority" as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to section 3 of the Clean Diamond Trade Act (the Act), section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 245 (April 23, 2001), I hereby identify the following entities as of July 29, 2004, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by section 6(b) of the Act. This list revises the previously published list of April 22, 2004 (69 FR 23848–23849, April 30, 2004).

Angola—Ministry of Geology and Mines.

Armenia—Ministry of Trade and Economic Development.

Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.

Belarus—Department of Finance.

Botswana—Ministry of Minerals, Energy and Water Resources.

Brazil—Ministry of Mines and Energy.

Bulgaria—Ministry of Finance.

Canada—Natural Resources Canada.

Central African Republic—Ministry of Energy and Mining.

China—General Administration of Quality Supervision, Inspection and Quarantine.

Democratic Republic of the Congo—Ministry of Mines and Hydrocarbons.

Croatia—Ministry of Economy.

European Community—DG/External Relations/A.2.

Ghana—Precious Minerals and Marketing Company Ltd.

Guinea—Ministry of Mines and Geology.

Guyana—Geology and Mines Commission.

India—The Gem and Jewellery Export Promotion Council.

Israel—The Diamond Controller.

Ivory Coast—Ministry of Mines and Energy.

Japan—Ministry of Economy, Trade and Industry.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lesotho—Commissioner of Mines and Geology.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
Norway—The Norwegian Goldsmiths' Association.
Romania—National Authority for Consumer Protection.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Singapore—Singapore Customs.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection;
Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 04–18021 Filed 8–5–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4778]

Notice of Meeting; United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the second phase of the World Summit on the Information Society (WSIS). The meeting will take place on Friday, September 10, 2004 from 10:30 a.m. to 12 p.m. in the auditorium of the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St., NW., Washington, DC.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. Persons planning to attend this meeting should send the following data by fax to (202) 647–5957 or e-mail to *jillsonad@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–5205 or e-mail to *jillsonad@state.gov*.

Dated: July 26, 2004.

Anne Jillson,

Foreign Affairs Officer, Department of State.

[FR Doc. 04–18020 Filed 8–5–04; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832. (SC: 000XYDJ)

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than September 7, 2004.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal for an extension of a currently approved collection, with revisions, which will expire August 31, 2004. (*OMB Control number:* 3316–0105.)

Title of Information Collection: TVA Police Customer Satisfaction Survey.

Frequency of Use: On occasion.

Type of Affected Public: Individuals and Small Business.

Small Business or Organizations Affected: Yes.

Estimated Number of Annual Responses: 50.

Estimated Total Annual Burden Hours: 4.25.

Estimated Average Burden Hours Per Response: 5 Minutes.

Need For and Use of Information: This information collection will be randomly distributed to individuals who use TVA facilities and come in contact with TVA Police Officers (*i.e.*, campers, boaters, marina operators, etc.) to provide feedback on the quality of the security and safety provided by TVA Police on TVA-managed public lands. Individuals may also provide feedback by accessing the TVA Police Web site (*http://www.tva.gov*). The information collection will be used to evaluate current security and safety policies and to identify new opportunities for improvement.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations Information Services.

[FR Doc. 04–17978 Filed 8–5–04; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2004–18748]

Agency Information Collection Activities; Request for Comments; Renewal of OMB Clearance for Information Collection; Customer Satisfaction Surveys

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a clearance renewal for an existing information collection

that involves generic customer satisfaction surveys. We are required by the Paperwork Reduction Act of 1995 to publish this notice in the **Federal Register.**

DATES: Please submit comments by October 5, 2004.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493–2251; or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number in this notice's heading. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burk, 202–366–8035, Corporate Management, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Customer Satisfaction Surveys.

OMB Control No: 2125–0590.

Background: Executive Order 12862, "Setting Customer Service Standards" requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services and products. The surveys covered in the existing generic clearance will provide the FHWA a means to gather this data directly from our customers. The information obtained from the surveys will be used to assist in evaluating service delivery and processes. The responses to the surveys will be voluntary and will not involve information that is required by regulations. There will be no direct costs to the respondents other than their time. The FHWA plans to provide an electronic means for responding to the majority of the surveys via the World Wide Web.

Respondents: State and local governments, highway industry organizations, general public.

Frequency: Generally, on an annual basis.

Estimated Total Annual Burden Hours: The burden hours per response will vary with each survey; however, we estimate an average burden of 15 minutes for each survey. We estimate that FHWA will survey approximately 50,000 respondents annually during the next three years. Therefore, the estimated total annual burden is 12,500 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of computer technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 29, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–17953 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004 18770]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THE BEAST.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18770 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 7, 2004.

ADDRESSES: Comments should refer to docket number MARAD 2004 18770. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THE BEAST is:

Intended Use: Passenger Charter with Captain for day sailing.

Geographic Region: South Florida.

Dated: July 30, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–18009 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2004–18776]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 5, 2004.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Marcia Tarbet, NHTSA 400 Seventh Street, SW., Room 5208, NPO–321, Washington, DC 20590. Marcia Tarbet's telephone number is (202) 366–2570. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Highway Crash Data Collection for the Evaluation of Antilock Brake Systems (ABS) and Rear Impact Guards on Heavy Vehicles.

OMB Control Number: 2127–0614.

Affected Public: State and Local Governments.

Form Number: N/A.

Abstract: As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Federal Motor Vehicle Safety Standard (FMVSS) 105 (49 CFR 571.105) and FMVSS 121 (49 CFR 571.121) require ABS and a malfunction indicator lamp (MIL) on all new heavy vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or more. Implementation of the standards was performed over a three-year period: air-brake truck tractors manufactured on or after March 1, 1997, air-brake trailers and single-unit trucks manufactured on or after March 1, 1998, and hydraulic brake trucks manufactured on or after March 1, 1999.

FMVSS 223 (49 CFR 571.223) and 224 (49 CFR 571.224) set minimum requirements for the geometry, configuration, strength and energy absorption capability of rear impact guards on full trailers and semi-trailers over 10,000 pounds GVWR manufactured on or after January 26, 1998. NHTSA's Office of Planning, Evaluation, and Budget is planning a highway crash data collection effort that will provide adequate information to perform an evaluation of the effectiveness of ABS and rear impact guards for heavy trucks. This study will estimate the actual safety benefits (crashes, injuries, and fatalities avoided) achieved by the standards and provide a basis for assessing whether the standards are functioning as intended. Highway crash data will be analyzed to the extent that the experiences of heavy trucks equipped with ABS and rear impact guards can be compared with the experiences of heavy trucks not so equipped.

Estimated Annual Burden: The annual burden is estimated to be 4,036 hours.

Number of Respondents: The state police in one state will report information on a total of 12,500 crashes.

Issued on: August 2, 2004.

Noble N. Bowie,

Associate Administrator for Planning, Evaluation, and Budget.

[FR Doc. 04–17991 Filed 8–5–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34521]

Cleveland Commercial Railroad Company, LLC—Change in Operators Exemption—Wheeling & Lake Erie Railway Company

Cleveland Commercial Railroad Company, LLC (CCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a line of railroad owned by Wheeling & Lake Erie Railway Company (W&LE). Pursuant to a Lease and Operating Agreement entered into on June 21, 2004, between CCR and W&LE, CCR will lease and operate W&LE's rail line extending from a connection with W&LE at milepost 15.5 at Falls Junction, in Glenwillow, OH, to milepost 5.1, in Cleveland, OH, a distance of approximately 10.4 miles, in Cuyahoga County, OH. The line has been operated previously by Connotton Valley Railway, Inc. (CVR).[1]

[1] *See Connotton Valley Railway, Inc.—Lease and Operation Exemption—Wheeling & Lake Erie*

The parties indicated that the transaction was scheduled to be consummated not less than 7 days after the exemption was filed, which would have been July 15, 2004.

Railway Company, STB Finance Docket No. 34264 (STB served Nov. 7, 2002). On June 18, 2004, CVR's lease of the line terminated, and CVR ceased all operations on the line. W&LE has been providing rail service to customers on the line since June 18, 2004, pursuant to its underlying common carrier obligation as owner of the line. Upon consummation of the change in operators authorized by the exemption, CVR's authority to lease and operate the line will terminate. W&LE states that CVR consents to the proposed change in operators of the line.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed by 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. 34521, 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 Jami L. Bishop, Law Offices of Bishop & Nosich, LLC, 143 West Main Street, Cortland, OH 44410.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 30, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–18010 Filed 8–5–04; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Friday,
August 6, 2004

Part II

Farm Credit Administration

12 CFR Parts 607, 614, 615, and 620
Assessment and Apportionment of Administrative Expenses; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Capital Adequacy Risk-Weighting Revisions; Proposed Rule

FARM CREDIT ADMINISTRATION

12 CFR Parts 607, 614, 615, and 620

RIN 3052–AC09

Assessment and Apportionment of Administrative Expenses; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Capital Adequacy Risk-Weighting Revisions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes to change its regulatory capital standards on recourse obligations, direct credit substitutes, residual interests, asset- and mortgage-backed securities, guarantee arrangements, claims on securities firms, and certain qualified residential loans. We are modifying our risk-based capital requirements to more closely match a Farm Credit System (FCS or System) institution's relative risk of loss on these credit exposures to its capital requirements. In doing so, we propose to risk-weight recourse obligations, direct credit substitutes, residual interests, and asset- and mortgage-backed securities based on external credit ratings from nationally recognized statistical rating organizations (NRSROs). In addition, our proposal will make our regulatory capital treatment more consistent with that of the other financial regulatory agencies for transactions and assets involving similar risk and address financial structures and transactions developed by the market since our last update. We also propose to make a number of nonsubstantive changes to our regulations to make them easier to use.

DATES: Please send your comments to us by November 4, 2004.

ADDRESSES: You may send comments by electronic mail to "*reg-comm@fca.gov*," through the Pending Regulations section of FCA's Web site, "*http://www.fca.gov*," or through the governmentwide "*http://www.regulations.gov*" Web site. You may also send comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; TTY (703) 883–4434;

or

Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Ensure FCS institutions maintain capital levels commensurate with their relative exposure to credit risk;
- Help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies [1] for transactions involving similar risk;
- Address a recent recommendation by the United States General Accounting Office (GAO) to take appropriate measures to reduce potential safety and soundness issues that may arise from capital arbitrage; and
- Allow FCS institutions' capital to be used more efficiently in serving agriculture and rural America and supporting other System mission activities.

II. Background

A. Basis of Current Risk-Based Capital Rules

Since the late 1980s, the regulatory capital requirements applicable to federally regulated financial institutions, including FCS institutions, have been based, in part, on the risk-based capital framework developed under the guidance of the Basel Committee on Banking Supervision (Basel Committee).[2] We first adopted risk-weighting categories for System assets as part of the 1988 regulatory capital revisions [3] required by the Agricultural Credit Act of 1987 [4] and made minor revisions to these categories in 1998.[5] Risk-weighting is used to assign on- and off-balance sheet positions appropriate capital requirements and to compute the risk-adjusted asset base for FCS banks' and associations' permanent capital, core surplus, and total surplus ratios. The current risk-weighting categories are similar to those outlined in the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord), which were also adopted by the other financial regulatory agencies. Our risk-based capital requirements are contained in subparts H and K of part 615 of our regulations.

B. Implications of the New Basel Capital Accord

In April 2003, the Basel Committee issued a consultative document on the proposed New Basel Capital Accord (Basel II). Basel II discusses potential modifications to the current Basel Accord, including the capital treatment of securitizations. The standards established by our proposal enhance risk sensitivity in a manner consistent with the standardized approach to credit risk under Basel II. The standardized approach establishes fixed risk weights corresponding to each supervisory risk weight category and makes use of external credit assessments to enhance risk sensitivity compared with the current Basel Accord. Similarly, under our proposal we use external credit ratings assigned by NRSROs as a basis for determining the credit quality and the resulting capital treatment for credit exposures.[6] According to their most recent press release (May 11, 2004), the Basel Committee has achieved consensus on the remaining issues regarding the proposals for the new international capital standard. The Basel Committee also confirmed that the standardized and foundation approaches will be implemented from year-end 2006. However, the Committee indicated that another year of impact analysis will be needed to evaluate the most advanced approaches, and therefore these will not be implemented until year-end 2007. As we continue to review Basel II and assess its implications and appropriateness for FCS institutions, we may make further revisions to our capital regulations. In the interim, we welcome comments on the proposed

[1] We refer collectively to the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) as the "other financial regulatory agencies."

[2] The Basel Committee is a committee of central banks and bank supervisors/regulators from the major industrialized countries that formulate standards and guidelines related to banking and recommend them for adoption by member countries and others. All Basel Committee documents mentioned in this preamble are available on the Committee's Web site at *www.bis.org/bcbs/*.

[3] *See* 53 FR 39229 (October 6, 1988).

[4] Agricultural Credit Act of 1987, Pub. L. 100–233 (January 6, 1988).

[5] *See* 63 FR 39219 (July 22, 1998).

[6] An NRSRO is a rating organization that the Securities and Exchange Commission recognizes as an NRSRO. *See* 12 CFR 615.5131(j). *See also* 66 FR 59632, 59639, 59655, 59662 (November 29, 2001).

new framework and its applicability to FCS institutions.

C. Rules Recently Adopted by the Other Financial Regulatory Agencies

In developing these proposed changes, we also took into consideration recent changes the other financial regulatory agencies made to their capital rules. These changes are briefly described below.

In November 2001, the other financial regulatory agencies issued a final rule that amended their risk-based capital regulations for positions that banking organizations [7] hold in recourse obligations, direct credit substitutes, residual interests, and asset- and mortgage-backed securities.[8] The other financial regulatory agencies intended for these changes to produce more consistent capital treatment for credit risks associated with exposures arising from these positions. More specifically, the new risk-based standards tie capital requirements for these transactions to their relative risk exposure, as measured by credit ratings received from an NRSRO.

Similarly, in April 2002, the other financial regulatory agencies, consistent with the proposed changes to the Basel Accord, issued a rule that amended their risk-based capital standards for banking organizations with regard to the risk weighting of claims on, and claims guaranteed by, qualifying securities firms.[9] The capital requirements for these claims are also tied in a similar manner to their relative risk exposure as measured by NRSRO credit ratings.

In January 2002, the other financial regulatory agencies (except the OTS) adopted a joint final rule governing the regulatory capital treatment of equity investments in nonfinancial companies held by banking organizations under various legal authorities.[10] Among other changes in regulatory capital treatment, this joint final rule addresses the risk weighting of investments in small business investment companies (SBICs).

In August 2003, the other financial regulatory agencies issued for comment their views on the proposed framework for implementing the Basel II in the United States.[11] The advance notice of proposed rulemaking (ANPRM) describes significant elements of the Advanced Internal Ratings-Based approach for credit risk (including credit exposures from securitizations) and the Advanced Measurement Approaches for operational risk. The ANPRM also specifies the criteria that would be used to determine banking organizations that would be required to use the advanced approaches.[12]

Our proposal does not address the advanced approach for positions in securitizations (or any other credit exposures). The focus of this proposed rule is on improving the risk sensitivity of the current risk-based capital through the use of external credit ratings.

D. FCA Rulemakings

On February 19, 2003, the FCA Board adopted an interim final rule that amended our capital rules to allow System institutions to use a lower risk weighting for highly rated investments in non-agency [13] asset-backed securities (ABS) and mortgage-backed securities (MBS), which have reduced exposure to credit risk.[14] This was one of the changes the other financial regulatory agencies made in November 2001. Because this change was narrow and noncontroversial, relieved a regulatory burden, and immediately furthered the mission of the System, we adopted it without prepromulgation comment. This change became effective on May 13, 2003. We issued the interim final rule with a request for comments but received none.

Additionally, on April 22, 2004, FCA adopted changes to the risk-based capital treatment for other financing institutions (OFIs).[15] Those amendments also aimed to enhance the risk sensitivity of FCA's risk-based capital rules through changes in risk weightings. This proposed rule incorporates the changes made to our risk weightings through the OFI rulemaking.

E. GAO Recommendation on Capital Arbitrage

In a recent report, the GAO recommended that the FCA "[c]reate a plan to implement actions currently under consideration to reduce potential safety and soundness issues that may arise from capital arbitrage activities of Farmer Mac and FCS institutions." [16] This proposed rulemaking takes important steps to reduce potential safety and soundness issues that may result from securitization and guarantee/credit protection arrangements that FCS institutions engage in with the Federal Agricultural Mortgage Corporation (Farmer Mac), domestic banks, and securities firms. In particular, we take measures to ensure that FCS institutions cannot alter their capital requirements simply by using different structures, arrangements or counterparties without changing the nature of the risks they assume or retain.

III. Scope of Our Proposal

Our proposal embraces many of the Basel Committee's objectives for improving risk sensitivity in regulatory capital rules and aligns our risk-based capital framework closely with the rules of the other financial regulatory agencies. However, because the scope of the FCS institutions' activities differs from the activities of banking organizations, our proposal is not identical to their rules. Their rules focus on traditional securitization activities, where a banking organization sells assets or credit exposures to increase its liquidity and manage credit risk. Our proposal places more emphasis on capital treatment of investments in ABS and MBS held for liquidity and other types of structured financial transactions and arrangements where an FCS institution transfers, retains, or assumes credit risk to manage its credit risk profile. Examples of these other types of transactions and arrangements are synthetic securitizations, financial guarantee arrangements, long-term standby purchase commitments, and credit derivatives.

Like the other financial regulatory agencies, we are also proposing a ratings-based approach for claims on securities firms. Additionally, similar to the rules that the other financial regulatory agencies have adopted, our proposal also addresses risk weighting for authorized investments in nonfinancial companies. Subtitle H of the Consolidated Farm and Rural Development Act,[17] as amended by section 6029 of the Farm Security and Rural Investment Act of 2002,[18] authorizes System institutions to invest in rural business investment companies (RBICs). RBICs are similar to SBICs, in

[7] Banking organizations include banks, bank holding companies, and thrifts. *See* 66 FR 59614 (November 29, 2001).

[8] *See* 66 FR 59614 (November 29, 2001).

[9] *See* 67 FR 16971 (April 9, 2002).

[10] *See* 67 FR 3784 (January 25, 2002).

[11] *See* 68 FR 45900 (August 4, 2003).

[12] Internationally active banking organizations with total assets of $250 billion or more or total on-balance sheet foreign exposures of $10 billion or more would be required to adopt the advanced approaches. All other banks would continue to apply the general risk-based capital rules, unless they opt-in.

[13] Non-agency securities are securities not issued or guaranteed by the United States Government, a Government agency (as defined in § 615.5201(f)), or a Government-sponsored agency (as defined in § 615.5201(g)).

[14] *See* 68 FR 15045 (March 28, 2003).

[15] *See* 69 FR 29852 (May 26, 2004).

[16] United States General Accounting Office, Farmer Mac: Some Progress Made, but Greater Attention to Risk Management, Mission, and Corporate Governance Is Needed, GAO–04–116, at page 59 (2003).

[17] Pub. L. 87–128 (August 8, 1961).

[18] Pub. L. 107–171 (May 3, 2002).

which banking organizations are allowed to invest.

Furthermore, as the other financial regulatory agencies have done, we are making explicit our authority to modify a stated risk weight or credit conversion factor, if warranted, on a case-by-case basis.

We invite comments on whether we should make any additional modifications to our risk-based capital rules to more closely align capital requirements for FCS institutions with their relative risk exposure and requirements for other banking organizations. We also invite comments on whether FCA should delay or accelerate implementation of any aspects of this proposal.

IV. Overview

A. General Approach

We propose revisions to our capital rules that would implement a ratings-based approach for risk-weighting positions in recourse obligations, residual interests (other than credit-enhancing interest-only strips), direct credit substitutes, and asset- and mortgage-backed securities. Highly rated positions will receive a favorable (less than 100-percent) risk weighting. Positions that are rated below investment grade [19] will receive a less favorable risk weighting (generally greater than 100-percent risk weight). The FCA proposes to apply this approach to positions based on their inherent risks rather than how they might be characterized or labeled.

As noted, our proposed ratings-based approach provides risk weightings for a variety of assets that have a wide range of credit ratings. We provide risk weightings for investments that are rated below investment grade, although they are not eligible investments under our current investment regulations.[20] This proposed rule does not, however, expand the scope of eligible investments. It merely explains how to risk weight an investment that was eligible when purchased if its credit rating subsequently deteriorates. Such investments must still be disposed of in accordance with § 615.5143.[21]

B. Asset Securitization

This proposal necessitates an understanding of asset securitization and other structured transactions that are used as tools to manage and transfer credit risk. Therefore, we have included the following background explanation to aid our readers.

Asset securitization is the process by which loans or other credit exposures are pooled and reconstituted into securities, with one or more classes or positions that may then be sold. Securitization provides an efficient mechanism for institutions to sell loan assets or credit exposures and thereby to increase the institution's liquidity. For purposes of this preamble, references to "securitizations" also include structured financial transactions or arrangements and synthetic transactions [22] that generally create stratified credit risk positions, which may or may not be in the form of a security, whose performance is dependent upon a pool of loans or other credit exposures. For example, in a synthetic securitization, loans are not sold or transferred, but rather the performance of securities is tied to a reference pool of loan assets or other credit exposures.[23]

Securitizations typically carve up the risk of credit losses from the underlying assets and distribute it to different parties. The "first dollar," or most subordinate, loss position is first to absorb credit losses; the most "senior" investor position is last to absorb losses; and there may be one or more loss positions in between ("second dollar" loss positions). Each loss position functions as a credit enhancement for the more senior positions in the structure.

Recourse, in connection with sales of whole loans or loan participations, is now frequently associated with asset securitizations. Depending on the type of securitization, the sponsor of a securitization may provide a portion of the total credit enhancement internally, as part of the securitization structure, through the use of excess spread accounts, overcollateralization, retained subordinated interests, or other similar on-balance sheet assets. When these or other on-balance sheet internal enhancements are provided, the enhancements are "residual interests" for regulatory capital purposes.

A seller may also arrange for a third party to provide credit enhancement [24] in an asset securitization. If another financial institution provides the third-party enhancement, then that institution assumes some portion of the assets' credit risk. In this proposed rule, all forms of third-party enhancements, *i.e.*, all arrangements in which an FCS institution assumes credit risk from third-party assets or other claims that it has not transferred, are referred to as "direct credit substitutes."

Many asset securitizations use a combination of recourse and third-party enhancements to protect investors from credit risk. When third-party enhancements are not provided, the institution ordinarily retains virtually all of the credit risk on the assets.

C. Risk Management

While asset securitization can enhance both credit availability and profitability, managing the risks associated with this activity poses significant challenges. While not new to FCS institutions, these risks may be less obvious and more complex than traditional lending activities. Specifically, securitization can involve credit, liquidity, operational, legal, and reputation risks that may not be fully recognized by management or adequately incorporated into risk management systems. The capital treatment required by this proposed rule addresses credit risk presented in securitizations and other credit risk mitigation techniques. Therefore, it is essential that an institution's compliance with capital standards be complemented by effective risk management practices and strategies.

Similar to the other financial regulatory agencies, the FCA expects FCS institutions to identify, measure, monitor, and control securitization risks and explicitly incorporate the full range of those risks into their risk management systems. The board and management are responsible for adequate policies and procedures that address the economic substance of their activities and fully recognize and ensure appropriate management of related risks. Additionally, FCS institutions must be able to measure and manage their risk exposure from securitized positions, either retained or acquired. The formality and sophistication with which the risks of these activities are

[19] Investment grade means a credit rating of AAA, AA, A or BBB or equivalent by an NRSRO.

[20] *See* § 615.5140.

[21] Section 615.5143 provides that an institution must dispose of an ineligible investment within 6 months unless FCA approves, in writing, a plan that authorizes divestiture over a longer period of time. An institution must dispose of an ineligible investment as quickly as possible without substantial financial loss.

[22] For examples of synthetic securitization structures, *see* Banking Bulletin 99–43, December 1999 (OCC); Supervision and Regulation Letter 99–32, Capital Treatment for Synthetic Collateralized Loan Obligations, November 15, 1999 (Federal Reserve Board).

[23] Synthetic transactions bundle credit risks associated with on-balance sheet assets or off-balance sheet items and sell them into the market.

[24] The terms "credit enhancement" and "enhancement" refer to both recourse arrangements (including residual interests) and direct credit substitutes.

incorporated into an institution's risk management system should be commensurate with the nature and volume of its securitization activities.[25]

V. Section-by-Section Analysis of Proposed Changes

The following discussion provides explanations, where necessary, of the more complex changes we propose. Most of the changes are necessary to more closely align our rules with those of the other financial regulatory agencies and to recognize relative risk exposure. As mentioned above, we have also made a number of organizational and plain language changes to make our rules easier to follow. These changes are discussed later in this preamble.

A. Section 615.5201—Definitions

Because this rule would implement a new risk-weighting approach for recourse obligations, residual interests, direct credit substitutes, and other securitization and guarantee arrangements, we are proposing to amend § 615.5201 to add a number of new definitions relating to these activities. We are also proposing to update certain other definitions as warranted. For the most part, to achieve consistency with the other financial regulatory agencies, we are proposing to adopt the same definitions as the other agencies.

1. Credit Derivative

We propose to define credit derivative as a contract that allows one party (the protection purchaser) to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the protection provider). The value of a credit derivative is dependent, at least in part, on the credit performance of a "reference asset."

The proposed definitions of "recourse" and "direct credit substitute" cover credit derivatives to the extent that an institution's credit risk exposure exceeds its pro rata interest in the underlying obligation. The ratings-based approach therefore applies to rated instruments such as credit-linked notes issued as part of a synthetic securitization.

Credit derivatives can have a variety of structures. Therefore, we will continue to evaluate credit derivatives on a case-by-case basis. Furthermore, we will continue to use the December 1999 guidance on synthetic securitizations issued by the Federal Reserve Board and the OCC as a guide for determining appropriate capital requirements for FCS institutions and continue to apply the structural and risk management requirements outline in the 1999 guidance.[26]

2. Credit-Enhancing Interest-Only Strip

We propose to define the term "credit-enhancing interest-only strip" as an on-balance sheet asset that, in form or in substance, (1) Represents the contractual right to receive some or all of the interest due on transferred assets; and (2) exposes the institution to credit risk directly or indirectly associated with the transferred assets that exceeds its pro rata claim on the assets, whether through subordination provisions or other credit enhancement techniques. FCA proposes to reserve the right to identify other cash flows or related interests as credit-enhancing interest-only strips based on the economic substance of the transaction.

Credit-enhancing interest-only strips include any balance sheet asset that represents the contractual right to receive some or all of the remaining interest cash flow generated from assets that have been transferred into a trust (or other special purpose entity), after taking into account trustee and other administrative expenses, interest payments to investors, servicing fees, and reimbursements to investors for losses attributable to the beneficial interests they hold, as well as reinvestment income and ancillary revenues [27] on the transferred assets.

Credit-enhancing interest-only strips are generally carried on the balance sheet at the present value of the reasonably expected net cash flow, adjusted for some level of prepayments if relevant, and discounted at an appropriate market interest rate. Typically, transfers of assets accounted for as a sale under generally accepted accounting principles (GAAP) result in the seller recording a gain on the portion of the transferred assets that has been sold. This gain is recognized as income, thus increasing the institution's capital position.

Under the proposed rule, FCA would look to the economic substance of the transaction and reserve the right to identify other cash flows or spread-related assets as credit-enhancing interest-only strips on a case-by-case basis. For example, including some principal payments with interest and fee cash flows will not otherwise negate the regulatory capital treatment of that asset as a credit-enhancing interest-only strip. Credit-enhancing interest-only strips include both purchased and retained interest-only strips that serve in a credit-enhancing capacity, even though purchased interest-only strips generally do not result in the creation of capital on the purchaser's balance sheet.

3. Credit-Enhancing Representations and Warranties

When an institution transfers or purchases assets, including servicing rights, it customarily makes or receives representations and warranties concerning those assets. These representations and warranties give certain rights to other parties and impose obligations upon the seller or servicer of those assets. To the extent such representations and warranties function as credit enhancements to protect asset purchasers or investors from credit risk, the proposed rule treats them as recourse or direct credit substitutes.

More specifically, credit-enhancing representations and warranties are defined in the proposal as representations and warranties that: (1) Are made or assumed in connection with a transfer of assets (including loan-servicing assets); and (2) obligate an institution to protect investors from losses arising from credit risk in the assets transferred or loans serviced. As proposed, the term includes promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of collateral.

The proposed definition is consistent with the other financial regulatory agencies' long-standing recourse treatment of representations and warranties that effectively guarantee performance or credit quality of transferred loans. However, a number of factual warranties unrelated to ongoing performance or credit quality are typically made. These warranties entail operational risk, as opposed to credit risk inherent in a financial guaranty, and are excluded from the definitions of recourse and direct credit substitute. Warranties that create operational risk include warranties that assets have been underwritten or collateral appraised in conformity with identified standards and warranties that permit the return of assets in instances of incomplete documentation, misrepresentation, or fraud. FCA expects FCS institutions to be able to demonstrate effective management of operational risks created by warranties.

[25] This proposal would not grant any new authorities to System institutions. It merely provides risk weightings for investments and transactions that are otherwise authorized.

[26] *See* Banking Bulletin 99–43, December 1999 (OCC); Supervision and Regulation Letter 99–32,, Capital Treatment for Synthetic Collateralized Loan Obligations, November 15, 1999 (Federal Reserve Board).

[27] According to the Statement of Financial Accounting Standards No. 140, ancillary revenues include late charges on transferred assets.

Warranties or assurances that are treated as recourse or direct credit substitutes include warranties on the actual value of asset collateral or that ensure the market value corresponds to appraised value or the appraised value will be realized in the event of foreclosure and sale. Also, premium refund clauses, which can be triggered by defaults, are generally credit enhancements. A premium refund clause is a warranty that obligates the seller who has sold a loan at a price in excess of par, *i.e.*, at a premium, to refund the premium, either in whole or in part, if the loan defaults or is prepaid within a certain period of time. However, certain premium refund clauses are not considered credit enhancements, including:

(1) Premium refund clauses covering loans for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of the transfer; and

(2) Premium refund clauses covering assets guaranteed, in whole or in part, by the United States Government, a United States Government agency, or a United States Government-sponsored agency, provided the premium refund clause is for a period not to exceed 120 days from the date of transfer.

Clean-up calls, an option that permits a servicer or its affiliate to take investors out of their positions prior to repayment of all loans, are also generally treated as credit enhancements. A clean-up call is not recourse or a direct credit substitute only if the agreement to repurchase is limited to 10 percent or less of the original pool balance. Repurchase of any loans 30 days or more past due would invalidate this exemption.

Similarly, a loan-servicing arrangement is considered as recourse or a direct credit substitute if the institution, as servicer, is responsible for credit losses associated with the serviced loans. However, a cash advance made by a servicer to ensure an uninterrupted flow of payments to investors or the timely collection of the loans is specifically excluded from the definitions of recourse and direct credit substitute, provided that the servicer is entitled to reimbursement for any significant advances and this reimbursement is not subordinate to other claims. To be excluded from recourse and direct credit substitute treatment, an independent credit assessment of the likelihood of repayment of the servicer's cash advance should be made prior to advancing funds, and the institution should only make such an advance if prudent lending standards are met.

4. Direct Credit Substitute

The proposed definition of direct credit substitute complements the definition of recourse. We propose the term "direct credit substitute" to refer to an arrangement in which an institution assumes, in form or in substance, credit risk directly or indirectly associated with an on- or off-balance sheet asset or exposure that was not previously owned by the institution (third-party asset) and the risk assumed by the institution exceeds the pro rata share of the institution's interest in the third-party asset. If the institution has no claim on the third-party asset, then the institution's assumption of any credit risk is a direct credit substitute. The term explicitly includes items such as the following:

- Financial standby letters of credit that support financial claims on a third party that exceed an institution's pro rata share in the financial claim;
- Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed an institution's pro rata share in the financial claim;
- Purchased subordinated interests that absorb more than their pro rata share of losses from the underlying assets;
- Credit derivative contracts under which the institution assumes more than its pro rata share of credit risk on a third-party asset or exposure;
- Loans or lines of credit that provide credit enhancement for the financial obligations of a third party;
- Purchased loan-servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced (servicer cash advances are not direct credit substitutes); and
- Clean-up calls on third-party assets. However, clean-up calls that are 10 percent or less of the original pool balance and that are exercisable at the option of the institution are not direct credit substitutes.

5. Externally Rated

The proposal defines externally rated to mean that an instrument or obligation has received a credit rating from at least one NRSRO. The use of external credit ratings provides a way to determine credit quality relied upon by investors and other market participants to differentiate the regulatory capital treatment for loss positions representing different gradations of risk. This use permits more equitable treatment of transactions and structures in administering the risk-based capital requirements.

6. Financial Standby Letter of Credit

Section 615.5201(o) of our regulations currently defines the term "standby letter of credit." We propose to change the term to financial standby letter of credit, but propose no substantive changes to the definition.

7. Government Agency

This term is currently defined in two places in our capital regulations: § 615.5201(f), which is our definitions section, and § 615.5210(f)(2)(i)(D), which is our section on computing the permanent capital ratio. We propose to modify the § 615.5201(f) definition by replacing it with the definition of Government agency currently in § 615.5210(f)(2)(i)(D), and then delete the definition in § 615.5210(f)(2)(i)(D). We believe these changes would streamline the regulation. We do not intend to change the meaning of this term.

8. Government-Sponsored Agency

The term Government-sponsored agency is also currently defined in two places in our capital regulations (§ 615.5201(g), which is in the definitions section, and § 615.5210(f)(2)(ii)(A), which is in the section on computing the permanent capital ratio). We propose to modify the definition in § 615.5201(g) by replacing it with the § 615.5210(f)(2)(ii)(A) definition of Government-sponsored agency, and then delete the redundant definition in § 615.5210(f)(2)(ii)(A). This proposed change simply streamlines our regulations and does not change the meaning of the term Government-sponsored agency.

Under this proposal, the term "Government-sponsored agency" would be defined as an agency or instrumentality chartered or established to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government. This definition includes Government-sponsored enterprises, such as Fannie Mae and Farmer Mac, as well as Federal agencies, such as the Tennessee Valley Authority, that issue obligations that are not explicitly guaranteed by the United States' full faith and credit.

9. Nationally Recognized Statistical Rating Organization

We propose to define NRSRO as a rating organization that the Securities and Exchange Commission (SEC) recognizes as an NRSRO. This definition

is identical to the existing definition in § 615.5131(j) of our regulations.

10. Non-OECD Bank

We propose to define non-OECD bank as a bank and its branches (foreign and domestic) organized under the laws of a country that does not belong to the OECD group of countries.[28]

11. OECD Bank

We propose to define OECD bank as a bank and its branches (foreign and domestic) organized under the laws of a country that belongs to the OECD group of countries. For purposes of our capital regulations, this term would include U.S. depository institutions.

12. Permanent Capital

We propose to add language to clarify that permanent capital is subject to adjustments such as dollar-for-dollar reduction of capital for residual interests or other high-risk assets as described in proposed § 615.5207. We do not propose any other changes.

13. Recourse

The proposed rule defines the term "recourse" to mean an arrangement in which an institution retains, in form or in substance, any credit risk directly or indirectly associated with an asset it has sold (in accordance with GAAP) that exceeds a pro rata share of the institution's claim on the asset. If an institution has no claim on an asset it has sold, then the retention of any credit risk is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if an institution provides credit enhancement beyond any contractual obligation to support assets it has sold.

Our proposed definition of recourse is consistent with the other regulators' long-standing use of this term and incorporates existing practices regarding retention of risk in asset sales. The other financial regulatory agencies noted that third-party enhancements, *e.g.*, insurance protection, purchased by the originator of a securitization for the benefit of investors, do not constitute recourse. The purchase of enhancements for a securitization or other structured transaction where the institution is completely removed from any credit risk will not, in most instances, constitute recourse. However, if the purchase or premium price is paid over time and the size of the payment is a function of the third party's loss experience on the portfolio, such an arrangement indicates an assumption of credit risk and would be considered recourse.

14. Residual Interest

The proposed rule defines residual interest as any on-balance sheet asset that: (1) Represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with GAAP) of financial assets, whether through a securitization or otherwise; and (2) exposes an institution to credit risk directly or indirectly associated with the transferred asset that exceeds a pro rata share of that institution's claim on the asset, whether through subordination provisions or other credit enhancement techniques.

Residual interests generally include credit-enhancing interest-only strips, spread accounts, cash collateral accounts, retained subordinated interests (and other forms of overcollateralization), and similar assets that function as a credit enhancement. Residual interests generally do not include interests purchased from a third party. However, a purchased credit-enhancing interest-only strip is a residual interest because of its similar risk profile.

This functional based definition reflects the fact that financial structures vary in the way they use certain assets as credit enhancements. Therefore, residual interests include any retained on-balance sheet asset that functions as a credit enhancement in a securitization or other structured transaction, regardless of its characterization in financial or regulatory reports.

15. Rural Business Investment Companies

The proposed rule adds a definition for RBICs. Section 6029 of the Farm Security and Rural Investment Act of 2002 [29] amended the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et seq.*) by adding a new subtitle H, establishing a new "Rural Business Investment Program." The new subtitle permits FCS institutions to establish or invest in RBICs, subject to specified limitations. While the Secretary of Agriculture is responsible for promulgating regulations governing RBICs, the FCA continues to be responsible for addressing any issues pertaining to FCS institutions' investments in RBICs, including risk-weighting those investments. We define RBICs by referring to the statutory definition as codified in 7 U.S.C. 2009cc(14). That provision defines RBIC as "a company that (A) has been granted final approval by the Secretary [of Agriculture] * * * and; (B) has entered into a participation agreement with the Secretary [of Agriculture]."

16. Securitization

The proposed rule defines securitization as the pooling and repackaging by a special purpose entity or trust of assets or other credit exposures that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

17. Other Terms

We also propose to add definitions for the following terms:

- Bank
- Face Amount
- Financial Asset
- Qualified Residential Loan
- Qualifying Securities Firm
- Risk Participation
- Servicer Cash Advance
- Traded Position
- U.S. Depository Institution

Finally, we propose to carry over the remaining existing definitions without substantive change.

B. Sections 615.5210 and 615.5211—Ratings-Based Approach for Positions in Securitizations

1. Sections 615.5210 and 615.5211—General

As described in the overview section of this preamble, each loss position in an asset securitization structure functions as a credit enhancement for the more senior loss positions in the structure. Historically, neither our risk-based capital standards nor those of the other financial regulatory agencies varied the capital requirements for different credit enhancements or loss positions to reflect differences in the relative credit risks represented by the

[28] OECD stands for the Organization for Economic Cooperation and Development. The OECD is an international organization of countries that are committed to democratic government and the market economy. For purposes of our capital regulations, as well as those of the other financial regulatory agencies and the Basel Accord, OECD countries are those countries that are full members of the OECD or that have concluded special lending arrangements associated with the International Monetary Fund's General Arrangements to Borrow, excluding any country that has rescheduled its external sovereign debt within the previous 5 years. The OECD currently has 30 member countries. An up-to-date listing of member countries is available at *www.oecd.org* or *www.oecdwash.org*.

[29] Pub. L. 107–171.

positions. To address this issue, the other financial regulatory agencies implemented a multilevel, ratings-based approach to assess capital requirements on recourse obligations, residual interests (except credit-enhancing interest-only strips), direct credit substitutes, and senior and subordinated positions in asset-backed securities and mortgage-backed securities based on their relative exposure to credit risk. The approach uses credit ratings from NRSROs to measure relative exposure to credit risk and determine the associated risk-based capital requirement.

Under this rulemaking, we are proposing to adopt similar requirements. These changes would bring our regulations into close alignment with those of the other financial regulatory agencies for externally rated positions in securitizations with similar risks. We are also proposing to apply a ratings-based approach to unrated positions in Government-sponsored agency securitizations based on the issuer's credit rating beginning 18 months after the effective date of a final rule.

Currently, the other financial regulatory agencies do not apply a ratings-based approach to securities issued by Government-sponsored agencies; these securities are generally risk-weighted at 20 percent. The other financial regulatory agencies do, however, apply the ratings-based approach to rated positions in privately issued mortgage securities (*e.g.* collateralized mortgage obligations and real estate investment conduits) that are backed by agency mortgage pass-through securities. Further, the other financial regulatory agencies uniformly risk-weight stripped mortgage backed securities issued by Government-sponsored agencies at 100 percent because of their higher risk assessment. Additionally, the other financial regulatory agencies reserve the authority to require a higher risk weighting on any position (including positions in Government-sponsored agency securitizations) based on the underlying risks of the position.

The market has historically regarded securities issued by Government-sponsored agencies as posing minimal credit risk. However, we are concerned that subordinated positions, residual interests, or exposures to counterparties (including Government-sponsored agencies) that are not highly rated or are unrated may pose significant risks to FCS institutions. We are also concerned about the unique structural and operational risks that securitizations may present. Therefore, we believe it is appropriate to apply the ratings-based approach to all positions in securitizations that are not guaranteed by the full faith and credit of the United States.

Furthermore, the use of credit ratings would provide an objective basis for determining credit quality as relied upon by investors or other market participants. These ratings would then be used to differentiate the regulatory capital treatment for loss positions based on different gradations of risk. This approach would enable us to apply the risk-based capital treatment to a wide variety of transactions and structures in a more equitable manner.

Additionally, § 615.5210(f) of the proposed regulation would grant FCA the authority to override the use of certain ratings or the ratings on certain instruments, either on a case-by-case basis or through broader supervisory policy, if necessary or appropriate to address the risk that an instrument poses to FCS institutions.

2. Section 615.5210(b)—Positions that Qualify for the Ratings-Based Approach

Under § 615.5210(b) of our proposed rule, certain positions in securitizations qualify for the ratings-based approach. These positions in securitizations are eligible for the ratings-based approach, provided the positions have favorable external ratings (as explained below) by at least one NRSRO. Eighteen months after the effective date of the final rule, the ratings based approach will be implemented for unrated positions in securitizations that are guaranteed by Government-sponsored agencies based on the issuer credit rating of the agency. During the transition period before this provision is effective, FCS institutions may continue to risk-weight their unrated positions in securitizations that are guaranteed by Government-sponsored agencies at 20-percent, regardless of whether the agency maintains an issuer rating by an NRSRO.

More specifically, the following positions in securitizations qualify for the ratings-based approach if they satisfy the criteria set forth below:

- Recourse obligations;
- Direct credit substitutes;
- Residual interests (other than credit-enhancing interest-only strips);[30] and
- Asset- and mortgage-backed securities.

[30] We propose to exclude credit-enhancing interest-only strips from the ratings-based approach because of their high-risk profile, as discussed under section V.C.1. of this preamble.

3. Section 615.5210(b)—Application of the Ratings-Based Approach

Under proposed § 615.5210, the capital requirement for a position that qualifies for the ratings-based approach is computed by multiplying the face amount of the position by the appropriate risk weight as determined by the position's external credit rating. In the case of unrated positions in securitizations guaranteed by Government-sponsored agencies beginning 18 months after the effective date of the final rule, the issuer's credit rating will be used to determine the appropriate risk-weight for the position.

A position that is traded and externally rated qualifies for the ratings-based approach if its long-term external rating is one grade below investment grade or better (*e.g.*, BB or better) or its short-term external rating is investment grade or better (*e.g.*, A–3, P–3).[31] If the position receives more than one external rating, the lowest rating would apply. This requirement eliminates the potential for rating shopping. Currently, individual securities issued and guaranteed by Government-sponsored agencies generally do not have external ratings from NRSROs. If, however, a position in an agency securitization does have an external rating, that rating must be used to determine the appropriate risk-weighting for the position.

A position that is externally rated but not traded qualifies for the ratings-based approach if it satisfies the following criteria:

- It must be externally rated by more than one NRSRO;
- Its long-term external rating must be one grade below investment grade or better (*e.g.*, BB or better) or its short-term external rating must be investment grade or better (*e.g.*, A–3, P–3). If the position receives more than one external rating, the lowest rating would apply;
- The ratings must be publicly available; and
- The ratings must be based on the same criteria used to rate traded positions.

The proposed rule also specifically provides that an unrated position that is guaranteed by a Government-sponsored agency would qualify for the ratings-based approach based on the Government-sponsored agency's issuer credit rating beginning 18 months after the effective date of the final rule.

Under the ratings-based approach, the capital requirement for a position that qualifies for the ratings-based approach

[31] These ratings are examples only. Different NRSROs may have different ratings for the same grade.

is computed by multiplying the face amount of the position by the appropriate risk weight determined in accordance with the following tables: [32]

RISK-BASED CAPITAL REQUIREMENTS FOR LONG-TERM ISSUE OR ISSUER RATINGS

Rating category	Rating examples [33]	Risk weight (in percent)
Highest or second highest investment grade	AAA or AA	20.
Third highest investment grade	A	50.
Lowest investment grade	BBB	100.
One category below investment grade	BB	200.
More than one category below investment grade, or unrated	B or below or Unrated	Not eligible for the ratings-based approach.

RISK-BASED CAPITAL REQUIREMENTS FOR SHORT-TERM ISSUE RATINGS

Short-term rating category	Rating examples	Risk weight (in percent)
Highest investment grade	A–1, P–1	20.
Second highest investment grade	A–2, P–2	50.
Lowest investment grade	A–3, P–3	100.
Below investment grade, or unrated	B or lower (Not Prime)	Not eligible for the ratings—based approach.

The charts for long-term and short-term ratings are not identical because rating agencies use different methodologies. Each short-term rating category covers a range of longer-term rating categories. For example, a P–1 rating could map to a long-term rating as high as Aaa or as low as A3.

These proposed amendments would not change the risk-weight requirement that FCA recently adopted for eligible asset- and mortgage-backed securities that continue to be highly rated.[34] These amendments simply make our rule language more consistent with that used by the other financial regulatory agencies for these types of transactions.

C. Section 615.5210(c)—Treatment of Positions in Securitizations That Do Not Qualify for the Ratings-Based Approach

1. Section 615.5210(c)(1), (c)(2), and (c)(3)—Positions Subject to Dollar-for-Dollar Capital Treatment

We propose to subject certain positions in asset securitizations that do not qualify for the ratings-based approach to dollar-for-dollar capital treatment. These positions include:

- Residual interests that are not externally rated;
- Credit-enhancing interest-only strips; and
- Positions that have long-term external ratings that are two grades below investment grade or lower (*e.g.*, B or lower) or short-term external ratings that are one grade below investment grade or lower (*e.g.*, B or lower, Not Prime).[35]

We emphasize that credit-enhancing positions in securitizations of Government-sponsored agencies are subject to the same capital treatment as positions in non-agency securitizations with similar risk profiles. For example, if an FCS institution retains or purchases an unrated subordinated interest in a Government-sponsored agency securitization that provides a credit enhancement for the entire pool of loans in the securitization, then the FCS institution must hold capital dollar-for-dollar for the amount of that position.

Under the dollar-for-dollar treatment, an FCS institution must deduct from capital and assets the face amount of the position. This means, in effect, one dollar in total capital must be held against every dollar held in these positions, even if this capital requirement exceeds the full risk-based capital charge.

We propose the dollar-for-dollar treatment for the credit-enhancing and highly subordinated positions listed above because these positions raise a number of supervisory concerns that the other financial regulatory agencies also share.[36] The level of credit risk exposure associated with deeply subordinated assets, particularly subinvestment grade and unrated residual interests, is extremely high. They are generally subordinated to all other positions, and these assets are subject to valuation concerns that might lead to loss as explained further below. Additionally, the lack of an active market makes these assets difficult to independently value and relatively illiquid.

In particular, there are a number of concerns regarding residual interests. A banking organization can inappropriately generate "paper profits" (or mask actual losses) through incorrect cash flow modeling, flawed loss assumptions, inaccurate prepayment estimates, and inappropriate discount rates. Such practices often lead to an inflation of capital, falsely making the banking organization appear more financially sound. Also, embedded within residual interests, including credit-enhancing interest-only strips, is a significant level of credit and prepayment risk that make their valuation extremely sensitive to changes in underlying assumptions. For these reasons we, like the other financial regulatory agencies, concluded that a higher capital requirement is warranted for unrated residual interests and all credit-enhancing interest-only strips. Furthermore, the "low-level exposure rule," discussed below, does not apply to these positions in securitizations. For example, if an FCS institution holds a 10-percent residual interest that is not externally rated in a $100 million

[32] *See* paragraphs (b)(14), (c)(3), (d)(6), and (e) of proposed § 615.5211.

[33] These ratings are examples only. Different NRSROs may have different ratings for the same grade. Further, ratings are often modified by either a plus or minus sign to show relative standing within a major rating category. Under the proposed rule, ratings refer to the major rating category without regard to modifiers. For example, an investment with a long-term rating of "A-" would be risk weighted at 50 percent.

[34] *See* 68 FR 15045, March 24, 2003.

[35] *See* paragraphs (c)(1), (c)(2), and (c)(3) of proposed § 615.5210.

[36] *See* 66 FR 59614 (November 29, 2001).

securitization, its capital charge would be $10 million. If an FCS institution purchases a $25 million position in an ABS that is subsequently downgraded to B or lower, its capital charge would be $25 million, the full amount of the position.

We note that the final rules adopted by the other financial regulatory agencies impose both a dollar-for-dollar risk weighting for residual interests that do not qualify for the ratings-based approach and a concentration limit on a subset of those residual interests—credit-enhancing interest-only strips—for the purpose of calculating a bank's leverage ratio. Under their combined approach, credit-enhancing interest-only strips are limited to 25 percent of a banking organization's Tier 1 capital. Everything above that amount is deducted from Tier 1 capital. Generally, under the other financial regulatory agencies' rules, all other residual interests that do not qualify for the ratings-based approach (including any credit-enhancing interest-only strips that were not deducted from Tier 1 capital) are subject to a dollar-for-dollar risk weighting. The combined capital charge is limited to the face amount of a banking organization's residual interests.

As indicated previously, we are proposing a one-step approach for these positions in securitizations. This would require FCS institutions to deduct from capital and assets the face amount of their position. The resulting total capital charge is virtually the same under both approaches. However, we found that the one-step approach is easier to apply to FCS institutions because the way they compute their regulatory capital standards differs from the way other banking organizations compute their standards.

2. Section 615.5210(c)(4)—Unrated Recourse Obligations and Direct Credit Substitutes

As discussed in the definitions section, the contractual retention of credit risk by an FCS institution associated with assets it has sold generally constitutes recourse.[37] The definitions of recourse and direct credit substitute complement each other, and there are many types of recourse arrangements and direct credit substitutes that can be assumed through either on- or off-balance sheet credit exposures that are not externally rated. Under § 615.5210(c)(4) of this proposal, FCS institutions would be required to hold capital against the entire outstanding amount of assets supported (*e.g.*, all more senior positions) by an on-balance recourse obligation or direct credit substitute that is unrated. This treatment parallels our approach for off-balance sheet recourse obligations and direct credit substitutes, as discussed later under the computation of credit equivalent amounts. For example, if an FCS institution retains an on-balance sheet first-loss position through a recourse arrangement or direct credit substitute in a pool of rural housing loans that qualify for a 50-percent risk weight, the FCS institution would include the full amount of the assets in the pool, risk-weighted at 50 percent, in its risk-weighted assets for purposes of determining its risk-based capital ratios. The low-level exposure rule[38] provides that the dollar amount of risk-based capital required for assets transferred with recourse should not exceed the maximum dollar amount for which an FCS institution is contractually liable.

The other financial regulatory agencies currently permit their banking organizations to use three alternative approaches (*i.e.*, internal ratings, program ratings, and computer programs) for determining the capital requirements for certain unrated direct credit substitutes and recourse obligations in asset-backed commercial paper programs. The other financial regulatory agencies also recently issued an interim final rule and a proposed rule on the capital treatment for asset-backed commercial paper programs that are consolidated onto the balance sheets of the sponsoring banks. This change is the result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities.[39] At this time, the FCA has decided not to address the capital requirements for asset-backed commercial paper programs due to the limited involvement FCS institutions presently have in these programs. FCA will continue to determine the capital requirements for such programs on a case-by-case basis, but does request further comment on the appropriate capital treatment for these activities.

3. Sections 615.5210(c)(5) and 615.5211(d)(7)—Stripped Mortgage-Backed Securities (SMBS)

Under proposed §§ 615.5210(c)(5) and 615.5211(d)(7), SMBS and similar instruments, such as interest-only strips that are not credit-enhancing or principal-only strips (including such instruments guaranteed by Government-sponsored agencies), are assigned to the 100-percent risk-weight category. Even if highly rated, these securities do not receive the more favorable capital treatment available to other mortgage securities because of their higher market risk profile. Typically, SMBS contain a higher degree of price volatility associated with mortgage prepayments. As indicated previously, credit-enhancing positions in securitization are subject to dollar-for-dollar capital treatment.

4. Section 615.5211(d)—Unrated Positions in Asset-Backed Securities and Mortgage-Backed Securities

Unrated positions in mortgage- and asset-backed securities that do not qualify for the ratings-based approach would generally be assigned to the 100-percent risk-weight category under the proposal. This would include unrated positions in securitizations guaranteed by Government-sponsored agencies without issuer credit ratings beginning 18 months after the effective date of the final rule.

The FCA recognizes that the proposed risk-based capital requirements can provide a more favorable treatment for certain unrated positions in securitizations than those rated below investment grade. For this reason, FCA will look to the substance of the transaction to determine whether a higher capital requirement is warranted based on the risk characteristics of the position. Additionally, because of the many advantages, including pricing, liquidity, and favorable capital treatment on highly rated positions in asset securitizations, we believe this overall regulatory approach provides ample incentives for all participants to obtain external ratings.

D. Section 615.5210(d)—Senior Positions Not Externally Rated

For senior positions not externally rated, the following capital treatment applies under proposed § 615.5210(d). If an FCS institution retains an unrated position that is senior or preferred in all respects (including collateral and maturity) to a rated position that is traded, the position is treated as if it had the same rating assigned to the rated position. These senior unrated positions

[37] As previously discussed, the proposed rule defines the term "recourse" to mean an arrangement in which an institution retains, in form or in substance, any credit risk directly or indirectly associated with an asset it has sold, if the credit risk exceeds a pro rata share of the institution's claim on the asset. If an institution has no claim on an asset that it has sold, then the retention of any credit risk is recourse.

[38] *See* proposed § 615.5210(e).

[39] *See* 68 FR 56530 (October 1, 2003).

qualify for the risk weighting of the subordinated rated positions as long as the subordinate rated position is: (1) Traded; and (2) remains outstanding for the entire life of the unrated position, thus providing full credit support for the term of the unrated position.

E. Section 615.5210(e)—Low-Level Exposure Rule

Section 615.5210(e) of the proposed rule limits the maximum risk-based capital requirement to the lesser of the maximum contractual exposure or the full capital charge against the outstanding amount of assets transferred with recourse. When the proposed low-level exposure rule applies, an institution would generally hold capital dollar-for-dollar against the amount of its maximum contractual exposure. Thus, if the maximum contractual exposure to loss retained or assumed in connection with recourse obligation or a direct credit substitute is less than the full risk-based capital requirement for the assets enhanced, the risk-based capital requirement is limited to the maximum contractual exposure.

In the absence of any other recourse provisions, the on-balance sheet amount of assets retained or assumed in connection with a recourse obligation or direct credit substitute represents the maximum contractual exposure. For example, assume that $100 million of loans is sold and securitized and an FCS institution provides a $5 million credit enhancement through a recourse obligation. Instead of holding 7 percent or $7 million of capital, the low-level exposure limits the risk-based requirement to the $5 million maximum contractual loss exposure, with $5 million held dollar-for-dollar against capital.

F. Section 615.5211—Risk Categories—Balance Sheet Assets

1. Section 615.5211(b)(6)—Securities and Other Claims on, and Portions of Claims, Guaranteed by Government-Sponsored Agencies

Under proposed § 615.5211(b)(6), securities and other claims on, and portions of claims guaranteed by, Government-sponsored agencies are generally assigned to the 20-percent risk-weight category.[40] For example, this risk-based capital treatment applies to investments in debt securities or other similar obligations issued by agencies. Beginning eighteen months after the effective date of the final rule, this provision would exclude, positions in securitizations guaranteed by Government-sponsored agencies, such as asset- and mortgage-backed securities, which we have already discussed, and claims on Government-sponsored agencies that are described in the next section of this preamble.

2. Sections 615.5211(b)(7), (c)(4) and (d)(11)—Treatment of Assets Covered by Credit Protection Provided by Government-Sponsored Agencies and OECD Banks

This proposal addresses the risk-based capital treatment for assets covered by credit protection provided by Government-sponsored agencies and OECD banks.

FCS institutions use a variety of credit risk mitigation strategies to alter their risk profiles. Credit protection may be obtained through credit default swaps, loss purchase commitments, guarantees, and other similar arrangements. These transactions or arrangements often contain a number of structural complexities and may impose additional operational and counterparty risk on FCS institutions that use these arrangements. In an Informational Memorandum dated October 23, 2003, the agency specifically informed FCS institutions of its concerns regarding excessive risk exposure to single counterparties and suggested that FCS institution boards consider engaging in business transactions only with counterparties rated in one of the two highest rating categories by an NRSRO.

We believe FCS institutions should enter into these types of financial arrangements only with sophisticated entities that are financially strong and well capitalized. We believe a ratings-based approach coupled with a close examination of the unique features of these transactions will help create the appropriate incentives for FCS institutions to carefully select their counterparties and fully understand the risks transferred, retained, or assumed through these arrangements. FCS institutions should also take appropriate measures to manage additional operational risks that may be created by these arrangements. FCS institutions should thoroughly review and understand all the legal definitions and parameters of these instruments, including credit events that constitute default, as well as representations and warranties, to determine how well the contract will perform under a variety of economic conditions.

We believe it is appropriate to differentiate the capital requirements for these types of arrangements based on an assessment of the risks retained, transferred to investors or other third parties, or assumed in the form of counterparty risk. Thus, we are proposing to implement a ratings-based approach for assigning capital requirements to assets covered by credit protection arrangements, including credit derivatives (*e.g.*, credit default swaps), loss purchase commitments, guarantees and other similar arrangements.[41]

The implementation of this provision beginning 18 months after the effective date of the final rule will allow FCS institutions to assess their current risk mitigation techniques, counterparty risk exposures, and long-term capital adequacy objectives and make any adjustments that are necessary.

The following table indicates the risk weightings for assets covered by credit protection or guarantees based on the provider's credit rating when this provision becomes effective.

Credit Protection Provider Credit Rating[42]	AAA to AA	A	BBB or below or unrated
Risk weight of assets covered (in percent)	20	50	100

During the transition period, FCS institutions may continue to risk weight

[40] Assets in this category include, for example, asset- or mortgage-backed securities that are issued or guaranteed by Government-sponsored agencies.

[41] As under our existing regulations, all other claims on OECD banks will continue to be risk-weighted at 20 percent regardless of the OECD bank's rating or lack thereof. *See* proposed § 615.5211(b)(6).

[42] These ratings are examples only. Different NRSROs may have different ratings for the same

Continued

assets covered by credit protection contracts with OECD banks and Government-sponsored agencies at 20 percent. After the transition period ends, FCS institutions may only risk-weight loan assets (or portions of assets) covered by these arrangements at 20 percent provided the Government-sponsored agency or OECD bank providing the credit protection maintains an issuer credit rating in one of the two highest investment grade ratings from at least one NRSRO (if the credit protection provider is rated by more than one NRSRO the lowest rating applies).[43] If the credit protection provider is rated in the third investment grade category (*e.g.*, "A") by an NRSRO, a 50-percent risk weight will apply to the assets covered by the contract. If the credit protection provider is rated in the lowest investment grade category or below, or is not rated, a 100-percent risk weight will apply to the assets covered by the contract.[44]

Additionally, FCS institutions may recognize the credit protection in calculating their capital requirements only if the guarantee, credit derivative, or agreement represents a direct claim on the protection provider and it explicitly references specific assets. The agreement must also have legal certainty and be irrevocable and unconditional (there should be no clause in the contract that allows the protection provider to unilaterally cancel the credit coverage, and there should be no clause that prevents the protection provider from being obligated to pay out in a timely manner). FCS institutions must also satisfy the FCA that they have established appropriate controls to manage any additional operational risks that might be associated with such arrangements.

In situations where an FCS institution assumes a first loss position on loan assets covered by credit protection contracts, the FCS institution must hold capital on a dollar-for-dollar basis to support its first loss position. The remaining balance covered by the contract may be risk weighted based on the guarantor's or counterparty's credit rating as explained above. Under the proposal, an FCS institution's risk-based capital requirement is limited to the maximum dollar amount for which an FCS institution is contractually liable on the first loss position plus the capital charge for the remaining assets or the full capital charge (*e.g.*, 7 percent) for all the assets covered by the arrangement. For example, if an FCS institution retains a 2-percent first loss position in $100 of loan assets covered by a guarantee from an OECD bank rated "A," the FCS institution's combined capital charge for all the assets would be $2 for the first loss position plus $98 risk weighted at 50 percent multiplied by 7 percent, or $5.43.

As noted previously, we believe the use of credit ratings provides an objective basis for determining credit risk as relied upon by investors or other market participants. We believe this approach results in a more equitable treatment for all types of credit protection providers under our capital rules. Furthermore, this allows FCA to differentiate capital requirements based on an FCS institution's relative exposure to risk. Because the nature and structure of such arrangements may vary significantly, FCA reserves the authority to evaluate each arrangement individually and to make an appropriate capital determination as circumstances may warrant.

The other financial regulatory agencies have not yet implemented the ratings-based approach suggested under the Basel II proposal for claims on, or guarantees by, OECD banks or Government-sponsored agencies. The methodology that we propose to apply to certain guarantee/credit derivative arrangements is a limited application of the ratings-based approach proposed under Basel II for individual claims on and guarantees by banks (*i.e.*, Standardized Approach).[45] As previously noted, at this time we are continuing to evaluate Basel II and may propose additional amendments to more fully implement a ratings-based approach for other types of claims on or guarantees by financial institutions through a future rulemaking.

3. Section 615.5211(a)(5), (b)(15), and (b)(16)—Treatment of Claims on Qualifying Securities Firms

We are adding claims on qualifying securities firms to the current risk-based capital requirements.[46] In doing so, our proposal aims to level the playing field among OECD banks, Government-sponsored agencies and securities firms (that meet certain qualifying standards) that provide guarantees.

Specifically, we propose to adopt a 0-percent risk weight for claims on, or guaranteed by, qualifying securities firms that are collateralized by cash on deposit in the institution or by securities issued or guaranteed by the United States or OECD central governments, provided that a positive margin of collateral is required to be maintained on such a claim on a daily basis, taking into account any change in the institution's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim.[47]

We also propose to reduce from 100 percent to 20 percent the risk weighting applied to all other claims on and claims guaranteed by qualifying securities firms that satisfy specified external rating requirements.[48] Specifically, we propose to adopt a 20-percent risk weighting for all claims on and claims guaranteed by a qualifying securities firm that has a long-term issuer credit rating in one of the two highest investment-grade rating categories from an NRSRO, or if the claim is guaranteed by the qualifying securities firm's parent company with such a rating.[49]

We note that this ratings criteria is consistent with our proposed criteria for obtaining a 20-percent risk weight on assets covered by certain credit protection arrangements with Government-sponsored agencies and OECD banks described above. This proposal applies a higher rating standard to securities firms than the other financial regulatory agencies adopted to ensure consistency throughout our rules. Otherwise, the potential for capital arbitrage would exist when securities firms provide guarantees or credit protection through structured transactions and agreements. If we did not apply the higher standard to securities firms, an institution could receive a more favorable capital treatment by obtaining credit protection from a securities firm than a Government-sponsored agency or OECD bank, even when the underlying risk was the same. To avoid this result, we have crafted the regulations so that the

grade. Further, ratings are often modified by either a plus or minus sign to show relative standing within a major rating category. Under the proposed rule, ratings refer to the major rating category without regard to modifiers. For example, an investment with a long-term rating of "A-" would be risk weighted at 50 percent.

[43] *See* proposed § 615.5211(b)(7).

[44] *See* proposed § 615.5211(c)(4).

[45] *See* The New Basel Capital Accord Consultative Document, Basel Committee on Banking Supervision, April 2003.

[46] Under proposed § 615.5201, "qualifying securities firm" means: (1) A securities firm incorporated in the United States that is a broker-dealer that is registered with the SEC and that complies with the SEC's net capital regulations; and (2) a securities firm incorporated in any other OECD-based country, if the institution is subject to supervision and regulation comparable to that imposed on depository institutions in OECD countries.

[47] Proposed § 615.5211(a)(5).

[48] Proposed § 615.5211(b)(15).

[49] If ratings are available from more than one NRSRO, the lowest rating will be used to determine whether the rating standard has been met.

capital treatment is commensurate with the underlying risks.

Finally, we propose a 20-percent risk weight for certain collateralized claims on qualifying securities firms without regard to satisfaction of the rating standard, provided the claim arises under a contract that:

- Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed under standard industry documentation;
- Is collateralized by liquid and readily marketable debt or equity securities;
- Is marked-to-market daily;
- Is subject to a daily margin maintenance requirement under the standard documentation; and
- Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or voided, under applicable law of the relevant country.[50]

4. Section 615.5211(c)(2)—Treatment of Qualified Residential Loans

Existing § 613.3030 authorizes System institutions to provide financing to rural homeowners for the purpose of buying, remodeling, improving, and repairing rural homes. "Rural homeowner" is defined as an individual who resides in a rural area and is not a bona fide farmer, rancher, or producer or harvester of aquatic products. "Rural home" means a single-family moderately priced dwelling located in a rural area that will be owned and occupied as the rural homeowner's principal residence. "Rural area" means open country within a state or the Commonwealth of Puerto Rico, which may include a town or village that has a population of not more than 2,500 persons. Existing § 615.5210(f)(2)(iii)(B) assigns these rural home loans, provided they are secured by first lien mortgages or deeds of trust, to the 50-percent risk-weight category. However, residential loans to bona fide farmers, ranchers, and producers and harvesters of aquatic products are currently considered to be agricultural loans and are risk-weighted at 100 percent under § 615.5210(f)(2)(iv).

Proposed § 615.5211(c)(2) would assign a 50-percent risk weight to all qualified residential loans, as defined in proposed § 615.5201. To be a qualified residential loan, a loan must be either: (i) A rural home loan, as authorized by § 613.3030,[51] or (ii) a single-family residential loan to a bona fide farmer, rancher, or producer or harvester of aquatic products.[52] A qualified residential loan must be secured by a first lien mortgage or deed of trust, must have been approved in accordance with prudent underwriting standards, must not be past due 90 days or more or carried in nonaccrual status, and must have a monthly amortization schedule. In addition, the secured residence and residential site must have a deed separate from other adjoining land and a permanent right-of-way access.

We propose this change because we believe that all residential loans that meet the standards set forth in the definition of qualified residential loan, whether made to farmers, ranchers, or aquatic producers or harvesters or not, pose the same level of risk. This view is consistent with that of the other financial regulatory agencies. Under their rules, a loan that is fully secured by a first lien on a one- to four-family residential property is assigned to the 50-percent risk-weight category as long as the loan has been approved in accordance with prudent underwriting standards and is not past due 90 days or more or carried in nonaccrual status.[53] The other financial regulatory agencies do not distinguish whether such a loan is made to a farmer or a non-farmer.

Consistent with the position of the other financial regulatory agencies, any residential loan that does not meet the definition of a qualified residential loan would be assigned to the 100-percent risk-weight category.

5. Section 615.5211(d)(8)—Treatment of Investments in Rural Business Investment Companies

As previously discussed, the Farm Security and Rural Investment Act (Pub. L. 107–171) recently amended the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921 *et seq.*, to permit FCS institutions to establish or invest in RBICs subject to certain limitations. A RBIC has a similar mission and objectives to serve rural entrepreneurs as a SBIC does to serve qualifying small businesses. Currently, the other financial regulatory agencies risk-weight investments in SBICs at 100 percent and deduct from capital an escalating percentage of SBIC investments that exceed 15 percent of capital.[54] FCA proposes to risk-weight RBICs at 100 percent.[55] FCA is not proposing to limit the amount of RBIC investments that can receive the 100-percent risk weight because a System institution is precluded by statute from making an investment in a RBIC in excess of 5 percent of the capital and surplus of the institution.[56] This statutory limitation imposes adequate controls on risk from these investments.

G. Section 615.5212(b)(4)(i)—Computation of Credit-Equivalent Amounts for Direct Credit Substitutes and Recourse Obligations

We propose to modify our current methodology for determining the credit equivalent amount of off-balance sheet direct credit substitutes and propose to add a similar provision for recourse obligations. Under the proposal, the credit equivalent amount for a direct credit substitute or recourse obligation is the full amount of the credit-enhanced assets for which an institution directly or indirectly retains or assumes credit risk multiplied by a 100-percent conversion factor.[57] To determine the institution's risk-weighted assets for an off-balance sheet recourse obligation or a direct credit substitute, the credit equivalent amount is assigned to the risk weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

The proposal eliminates the current anomalies between direct credit substitutes and recourse arrangements that expose an institution to the same amount of risk but different capital requirements. These changes would also provide consistent risk-based capital treatment for positions with similar risk exposures regardless of whether they are structured as on- or off-balance sheet transactions. For example, as noted previously, for a direct credit substitute that is an on-balance sheet asset, *e.g.*, a purchased subordinated security, an institution must also calculate risk-weighted assets using the amount of the direct credit substitute and the full amount of the assets it supports, meaning all the more senior positions in the structure. This is another change necessary to make our rules consistent with the current rules established by the other financial regulatory agencies.

H. Section 615.5210(f)—Reservation of Authority

Financial institutions are developing novel transactions that do not fit into conventional risk-weight categories or credit conversion factors in the current standards. Financial institutions are also devising novel instruments that

[50] *See* proposed § 615.5211(b)(16).

[51] As discussed above, these loans are currently included in the 50-percent risk-weight category.

[52] As discussed above, these loans currently receive a 100-percent risk weighting.

[53] See, *e.g.*, FDIC regulations at 12 CFR Part 325, Appendix A, II.C., Category 3.

[54] *See* 67 FR 3784, January 25, 2002.

[55] *See* proposed § 615.5211(d)(8).

[56] 7 U.S.C. 2009cc–9(b).

[57] *See* proposed § 615.5212(b)(4)(i).

nominally fit into a particular category, but impose levels of risk on the financial institutions that are not commensurate with the risk-weight category for the asset, exposure or instrument. Accordingly, § 615.5210(f) of the proposed rule more explicitly indicates that FCA, on a case-by-case basis, may determine the appropriate risk weight for any asset or credit equivalent amount and the appropriate credit conversion factor for any off-balance sheet item in these circumstances. Exercise of this authority may result in a higher or lower risk weight or credit equivalent amount for these assets or off-balance sheet items. This reservation of authority explicitly recognizes the retention of sufficient discretion to ensure that novel financial assets, exposures, and instruments will be treated appropriately under the regulatory capital standards.

VI. Other Changes

In addition to the changes detailed above, we also propose to make a number of other changes. We propose most of these changes for clarity or plain language purposes or to eliminate obsolete references. These changes are described below.

A. Section 615.5211—Changes to Listing of Balance Sheet Assets

We propose to clarify the listing of balance sheet assets identified in each risk-weight category in proposed § 615.5211 to more closely align the regulatory language with our long-standing policy positions. This new regulatory language also mirrors the language used by the other financial regulatory agencies to the extent applicable to System institutions. Over the years, we have interpreted our risk-weighting categories consistently with the other financial regulatory agencies. In some instances, however, the listing of assets included in each category is not as specific or clear as that of the other financial regulatory agencies. We propose these amendments for the purpose of clarity and consistency with the other financial regulatory agencies.

1. Section 615.5211(a)—0-Percent Category

We propose to reorganize the order of the assets listed in the 0-percent risk-weight category.[58] We propose to add a listing for portions of local currency claims on, or unconditionally guaranteed by, non-OECD central governments (including non-OECD central banks), to the extent the institution has liabilities booked in that currency (§ 615.5211(a)(4)). We also propose to revise the language in §§ 615.5211(a)(1), 615.5211(a)(2), and 615.5211(a)(3).[59] Finally, we propose to delete existing § 615.5210(f)(2)(i)(C), which puts goodwill in the 0-percent category. Proposed § 615.5207(g) (which we propose to carry over without substantive change from existing § 615.5210(e)(7)) provides that an institution must deduct from total capital an amount equal to all goodwill before it assigns assets to the risk-weighting categories. Thus, it is unnecessary to assign goodwill to a risk-weighting category.

2. Section 615.5211(b)—20-Percent Category

We propose to reorganize the order of the assets listed in the 20-percent risk-weight category.[60] We propose to add the following assets in addition to the changes previously discussed:

- Portions of loans and other claims collateralized by cash on deposit (§ 615.5211(b)(9));
- Portions of claims collateralized by securities issued by official multinational lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member (§ 615.5211(b)(12)); and
- Investments in shares of mutual funds whose portfolios are permitted to hold only assets that qualify for the zero or 20-percent risk-weight categories (§ 615.5211(b)(13)).

We propose to revise the language in § 615.5211(b)(3),[61] (b)(4),[62] (b)(5),[63] (b)(6),[64] (b)(8),[65] (b)(10),[66] and (b)(11)[67] to make them easier to read.

3. Section 615.5211(c)—50-Percent Category

In the 50-percent risk-weight category, we propose to add a listing for revenue bonds or similar obligations, including loans and leases, that are obligations of a state or political subdivisions of the United States or other OECD countries but for which the government entity is committed to repay the debt only out of revenue from the specific projects financed.[68] We are making these revisions to further distinguish the varying degrees of risk associated with investments in different types of revenue bonds. This change also parallels the rules of the other financial regulatory agencies. We also propose to make plain language changes to § 615.5211(c)(1).[69]

4. Section 615.5211(d)—100-Percent Category

The existing 100-percent risk-weight category lists only four assets, including a catch-all: All other assets not specified in the other risk-weight categories, including, but not limited to, leases, fixed assets, and receivables. Consistent with the other financial regulatory agencies, and to provide clearer guidance, we propose to itemize many of the assets that are currently included within the catch-all, including:

- Claims on, or portions of claims guaranteed by, non-OECD central governments (except such claims that are included in other risk-weighting categories), and all claims on non-OECD state and local governments (§ 615.5211(d)(3));
- Industrial development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest (§ 615.5211(d)(4));
- Premises, plant, and equipment; other fixed assets; and other real estate owned (§ 615.5211(d)(5)).
- If they have not already been deducted from capital, investments in unconsolidated companies, joint ventures, or associated companies; deferred-tax assets; and servicing assets (§ 615.5211(d)(9)); and
- All other assets not specified, including, but not limited to, leases and receivables (§ 615.5211(d)(12)).

B. Other Nonsubstantive Changes

We propose to change the heading of § 615.5200 from "General" to "Capital planning" to better reflect the content of this section. We do not propose any other changes to this section.

We propose to break up § 615.5210, which is cumbersome to use because of its length, into seven separate regulatory sections. The newly redesignated sections are:

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[58] Except where otherwise indicated, all references are to the proposed regulation.

[59] *See* existing § 615.5210(f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(C).

[60] Except where otherwise indicated, all references are to the proposed regulation.

[61] Consolidated from existing § 615.5210(f)(2)(ii)(D) and (f)(2)(ii)(E).

[62] Existing § 615.5210(f)(2)(ii)(F).

[63] Consolidated from existing § 615.4210(f)(2)(ii)(B) and (f)(2)(ii)(J).

[64] This provision is not contained in current FCA regulations.

[65] Consolidated from existing § 615.5210(f)(2)(ii)(A) and (f)(2)(ii)(C).

[66] *See* existing § 615.5210(f)(2)(ii)(G).

[67] *See* existing § 615.5210(f)(2)(ii)(H).

[68] Proposed § 615.5211(c)(5). This provision is not contained in current FCA regulations.

[69] *See* existing § 615.5210(f)(2)(iii)(A).

- § 615.5206—Permanent capital ratio computation
- § 615.5207—Capital adjustments and associated reductions to assets
- § 615.5208—Allotment of allocated investments
- § 615.5209—Deferred-tax assets
- § 615.5210—Risk-adjusted assets
- § 615.5211—Risk categories—balance sheet assets
- § 615.5212—Credit conversion factors—off-balance sheet items

This reorganization should make these provisions easier to use. We do not intend any substantive changes with this reorganization.

We propose to delete an obsolete reference to the Farm Credit System Financial Assistance Corporation in § 615.5201.

We propose to add paragraph (k) to newly redesignated § 615.5207 for clarity.

We propose to make minor, nonsubstantive, plain language, and organizational changes throughout the revised regulation.

Because we propose to reorganize this regulation, references to the regulation in other FCA regulations need to be updated. Accordingly, we propose to make conforming reference updates in parts 607, 614, and 620 of this chapter.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 607

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, we propose to amend parts 607, 614, 615, and 620 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 607—ASSESSMENT AND APPORTIONMENT OF ADMINISTRATIVE EXPENSES

1. The authority citation for part 607 continues to read as follows:

Authority: Secs. 5.15, 5.17 of the Farm Credit Act (12 U.S.C. 2250, 2252) and 12 U.S.C. 3025.

§ 607.2 [Amended]

2. Amend § 607.2(b) introductory text by removing the reference "§ 615.5210(f)" and adding in its place "§ 615.5210."

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5, of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart J—Lending and Leasing Limits

4. Revise § 614.4351(a) introductory text to read as follows:

§ 614.4351 Computation of lending and leasing limit base

(a) *Lending and leasing limit base.* An institution's lending and leasing limit base is composed of the permanent capital of the institution, as defined in § 615.5201 of this chapter, with adjustments applicable to the institution provided for in § 615.5207 of this chapter, and with the following further adjustments:

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

5. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

6. Revise the heading of § 615.5200 to read as follows:

§ 615.5200 Capital planning.

* * * * *

7. Revise § 615.5201 to read as follows:

§ 615.5201 Definitions.

For the purpose of this subpart, the following definitions apply:

Allocated investment means earnings allocated but not paid in cash by a System bank to an association or other recipient.

Bank means an institution that:

(1) Engages in the business of banking;

(2) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(3) Receives deposits to a substantial extent in the regular course of business; and

(4) Has the power to accept demand deposits.

Commitment means any arrangement that legally obligates an institution to:

(1) Purchase loans or securities;

(2) Participate in loans or leases;

(3) Extend credit in the form of loans or leases;

(4) Pay the obligation of another;

(5) Provide overdraft, revolving credit, or underwriting facilities; or

(6) Participate in similar transactions.

Credit conversion factor means that number by which an off-balance sheet item is multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

Credit derivative means a contract that allows one party (the protection purchaser) to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the protection provider). The value of a credit derivative is dependent, at least

in part, on the credit performance of a "reference asset."

Credit-enhancing interest-only strip

(1) The term credit-enhancing interest-only strip means an on-balance sheet asset that, in form or in substance:

(i) Represents the contractual right to receive some or all of the interest due on transferred assets; and

(ii) Exposes the institution to credit risk directly or indirectly associated with the transferred assets that exceeds its pro rata claim on the assets, whether through subordination provisions or other credit enhancement techniques.

(2) FCA reserves the right to identify other cash flows or related interests as credit-enhancing interest-only strips. In determining whether a particular interest cash flow functions as a credit-enhancing interest-only strip, FCA will consider the economic substance of the transaction.

Credit-enhancing representations and warranties

(1) The term credit-enhancing representations and warranties means representations and warranties that:

(i) Are made or assumed in connection with a transfer of assets (including loan-servicing assets), and

(ii) Obligate an institution to protect investors from losses arising from credit risk in the assets transferred or loans serviced.

(2) *Credit-enhancing representations and warranties* include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral.

(3) Credit-enhancing representations and warranties do not include:

(i) Early-default clauses and similar warranties that permit the return of, or premium refund clauses covering, loans for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of the transfer;

(ii) Premium refund clauses covering assets guaranteed, in whole or in part, by the United States Government, a United States Government agency, or a United States Government-sponsored agency, provided the premium refund clause is for a period not to exceed 120 days from the date of transfer;

(iii) Warranties that permit the return of assets in instances of fraud, misrepresentation, or incomplete documentation; or

(iv) Clean-up calls if the agreements to repurchase are limited to 10 percent or less of the original pool balance (except where loans 30 days or more past due are repurchased).

Deferred-tax assets that are dependent on future income or future events means:

(1) Deferred-tax assets arising from deductible temporary differences dependent upon future income that exceed the amount of taxes previously paid that could be recovered through loss carrybacks if existing temporary differences (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse;

(2) Deferred-tax assets dependent upon future income arising from operating loss and tax carryforwards;

(3) Deferred-tax assets arising from temporary differences that could be recovered if existing temporary differences that are dependent upon other future events (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse.

Direct credit substitute means an arrangement in which an institution assumes, in form or in substance, credit risk directly or indirectly associated with an on- or off-balance sheet asset or exposure that was not previously owned by the institution (third-party asset) and the risk assumed by the institution exceeds the pro rata share of the institution's interest in the third-party asset. If the institution has no claim on the third-party asset, then the institution's assumption of any credit risk is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(1) Financial standby letters of credit that support financial claims on a third party that exceed an institution's pro rata share in the financial claim;

(2) Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed an institution's pro rata share in the financial claim;

(3) Purchased subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

(4) Credit derivative contracts under which the institution assumes more than its pro rata share of credit risk on a third-party asset or exposure;

(5) Loans or lines of credit that provide credit enhancement for the financial obligations of a third party;

(6) Purchased loan-servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Servicer cash advances as defined in this section are not direct credit substitutes; and,

(7) Clean-up calls on third-party assets. However, clean-up calls that are 10 percent or less of the original pool balance and that are exercisable at the option of the institution are not direct credit substitutes.

Direct lender institution means an institution that extends credit in the form of loans or leases to eligible borrowers in its own right and carries such loan or lease assets on its books.

Externally rated means that an instrument or obligation has received a credit rating from at least one NRSRO.

Face amount means:

(1) The notional principal, or face value, amount of an off-balance sheet item;

(2) The amortized cost of an asset not held for trading purposes; and

(3) The fair value of a trading asset.

Financial asset means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive from or exchange cash or another financial instrument with another party.

Financial standby letter of credit means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(1) To repay money borrowed by, or advanced to, or for the account of, a second party (the account party); or

(2) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

Government agency means an agency or instrumentality of the United States Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the United States Government.

Government-sponsored agency means an agency or instrumentality chartered or established to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

Institution means a Farm Credit Bank, Federal land bank association, Federal land credit association, production credit association, agricultural credit association, Farm Credit Leasing Services Corporation, bank for cooperatives, agricultural credit bank, and their successors.

Nationally recognized statistical rating organization (NRSRO) means a rating organization that the Securities and Exchange Commission recognizes as an NRSRO.

Non-OECD bank means a bank and its branches (foreign and domestic)

organized under the laws of a country that does not belong to the OECD group of countries.

Nonagreeing association means an association that does not have an allotment agreement in effect with a Farm Credit Bank or agricultural credit bank pursuant to § 615.5207(b)(2).

OECD means the group of countries that are full members of the Organization for Economic Cooperation and Development, regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund's General Arrangement to Borrow, excluding any country that has rescheduled its external sovereign debt within the previous 5 years.

OECD bank means a bank and its branches (foreign and domestic) organized under the laws of a country that belongs to the OECD group of countries. For purposes of this subpart, this term includes U.S. depository institutions.

Performance-based standby letter of credit means any letter of credit, or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment as a result of any default by a third party in the performance of a nonfinancial or commercial obligation.

Permanent capital, subject to adjustments as described in § 615.5207, includes:

(1) Current year retained earnings;

(2) Allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, must be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(3) All surplus;

(4) Stock issued by a System institution, except:

(i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder;

(ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk;

(iii) Farm Credit Bank equities required to be purchased by Federal land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(iv) Capital subject to revolvement, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board of directors in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted;

(5) Term preferred stock with an original maturity of at least 5 years and on which, if cumulative, the board of directors has the option to defer dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions);

(6) Financial assistance provided by the Farm Credit System Insurance Corporation that the FCA determines appropriate to be considered permanent capital; and

(7) Any other debt or equity instruments or other accounts the FCA has determined are appropriate to be considered permanent capital. The FCA may permit one or more institutions to include all or a portion of such instrument, entry, or account as permanent capital, permanently or on a temporary basis, for purposes of this part.

Qualified residential loan:

(1) The term qualified residential loan means:

(i) A rural home loan, as authorized by § 613.3030, and

(ii) A single-family residential loan to a bona fide farmer, rancher, or producer or harvester of aquatic products.

(2) A qualified residential loan must be secured by a first lien mortgage or deed of trust, must have been approved in accordance with prudent underwriting standards, must not be past due 90 days or more or carried in nonaccrual status, and must have a monthly amortization schedule. In addition, the secured residence and residential site must have a deed separate from other adjoining land and a permanent right-of-way access.

Qualifying bilateral netting contract means a bilateral netting contract that meets at least the following conditions:

(1) The contract is in writing;

(2) The contract is not subject to a walkaway clause, defined as a provision that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract;

(3) The contract creates a single obligation either to pay or receive the net amount of the sum of positive and negative mark-to-market values for all derivative contracts subject to the qualifying bilateral netting contract;

(4) The institution receives a legal opinion that represents, to a high degree of certainty, that in the event of legal challenge the relevant court and administrative authorities would find the institution's exposure to be the net amount;

(5) The institution establishes a procedure to monitor relevant law and to ensure that the contracts continue to satisfy the requirements of this section; and

(6) The institution maintains in its files adequate documentation to support the netting of a derivatives contract.

Qualifying securities firm means:

(1) A securities firm incorporated in the United States that is a broker-dealer that is registered with the Securities and Exchange Commission (SEC) and that complies with the SEC's net capital regulations (17 CFR 240.15c3–1); and

(2) A securities firm incorporated in any other OECD-based country, if the institution is able to demonstrate that the securities firm is subject to supervision and regulation (covering its direct and indirect subsidiaries, but not necessarily its parent organizations) comparable to that imposed on depository institutions in OECD countries. Such regulation must include risk-based capital requirements comparable to those imposed on depository institutions under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord).

Recourse means an institution's retention, in form or in substance, of any credit risk directly or indirectly associated with an asset it has sold (in accordance with generally accepted accounting principles) that exceeds a pro rata share of the institution's claim on the asset. If an institution has no claim on an asset it has sold, then the retention of any credit risk is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if an institution provides credit enhancement beyond

any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(1) Credit-enhancing representations and warranties made on transferred assets;

(2) Loan-servicing assets retained pursuant to an agreement under which the institution will be responsible for losses associated with the loans serviced. Servicer cash advances as defined in this section are not recourse obligations;

(3) Retained subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

(4) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

(5) Loan strips sold without contractual recourse where the maturity of the transferred portion of the loan is shorter than the maturity of the commitment under which the loan is drawn;

(6) Credit derivatives issued that absorb more than the institution's pro rata share of losses from the transferred assets; and

(7) Clean-up call on assets the institution has sold. However, clean-up calls that are 10 percent or less of the original pool balance and that are exercisable at the option of the institution are not recourse arrangements.

Residual interest:

(1) The term residual interest means any on-balance sheet asset that:

(i) Represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise; and

(ii) Exposes an institution to credit risk directly or indirectly associated with the transferred asset that exceeds a pro rata share of the institution's claim on the asset, whether through subordination provisions or other credit enhancement techniques.

(2) Residual interests generally include credit-enhancing interest-only strips, spread accounts, cash collateral accounts, retained subordinated interests (and other forms of overcollateralization), and similar assets that function as a credit enhancement.

(3) Residual interests further include those exposures that, in substance, cause the institution to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold.

(4) Residual interests generally do not include interests purchased from a third party. However, purchased credit-enhancing interest-only strips are residual interests.

Risk-adjusted asset base means the total dollar amount of the institution's assets adjusted in accordance with § 615.5207 and weighted on the basis of risk in accordance with §§ 615.5211 and 615.5212.

Risk participation means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

Rural Business Investment Company has the definition given in 7 U.S.C. 2009cc(14).

Securitization means the pooling and repackaging by a special purpose entity or trust of assets or other credit exposures that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

Servicer cash advance means funds that a mortgage servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A servicer cash advance is not a recourse obligation or a direct credit substitute if:

(1) The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

(2) For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal amount on that loan.

Stock means stock and participation certificates.

Total capital means assets minus liabilities, valued in accordance with generally accepted accounting principles (GAAP), except that liabilities do not include obligations to retire stock protected under section 4.9A of the Act.

Traded position means a position retained, assumed, or issued that is externally rated, where there is a reasonable expectation that, in the near future, the rating will be relied upon by:

(1) Unaffiliated investors to purchase the position; or

(2) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

U.S. depository institution means branches (foreign and domestic) of federally insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and United States territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic depository institutions, and U.S.-chartered depository institutions owned by foreigners. The definition excludes branches and agencies of foreign banks located in the U.S. and bank holding companies.

§ 615.5210 [Removed]

8. Remove existing § 615.5210.

9. Add new §§ 615.5206 through 615.5212 to read as follows:

§ 615.5206 Permanent capital ratio computation.

(a) The institution's permanent capital ratio is determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles except that the obligations of the Farm Credit System Financial Assistance Corporation issued to repay banks in connection with the capital preservation and loss-sharing agreements described in section 6.9(e)(1) of the Act shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) The institution's asset base and permanent capital are computed using average daily balances for the most recent 3 months.

(c) The institution's permanent capital ratio is calculated by dividing the institution's permanent capital, adjusted in accordance with § 615.5207 (the numerator), by the risk-adjusted asset base (the denominator) as determined in § 615.5210, to derive a ratio expressed as a percentage.

(d) Until September 27, 2002, payments of assessments to the Farm Credit System Financial Assistance Corporation, and any part of the obligation to pay future assessments to the Farm Credit System Financial Assistance Corporation that is recognized as an expense on the books of a bank or association, shall be included in the capital of such bank or association for the purpose of determining its compliance with regulatory capital requirements, to the extent allowed by section 6.26(c)(5)(G) of the Act. If the bank directly or indirectly passes on all or part of the payments to its affiliated associations pursuant to section 6.26(c)(5)(D) of the

Act, such amounts shall be included in the capital of the associations and shall not be included in the capital of the bank. After September 27, 2002, no payments of assessments or obligations to pay future assessments may be included in the capital of the bank or association.

§ 615.5207 Capital adjustments and associated reductions to assets.

For the purpose of computing the institution's permanent capital ratio, the following adjustments must be made prior to assigning assets to risk-weight categories and computing the ratio:

(a) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings must be eliminated to the extent of the offset. If the investments are equal in amount, each institution must deduct from its assets and its total capital an amount equal to the investment. If the investments are not equal in amount, each institution must deduct from its total capital and its assets an amount equal to the smaller investment. The elimination of reciprocal holdings required by this paragraph must be made prior to making the other adjustments required by this section.

(b) Where a Farm Credit Bank or an agricultural credit bank is owned by one or more Farm Credit System institutions, the double counting of capital is eliminated in the following manner:

(1) All equities of a Farm Credit Bank or agricultural credit bank that have been purchased by other Farm Credit institutions are considered to be permanent capital of the Farm Credit Bank or agricultural credit bank.

(2) Each Farm Credit Bank or agricultural credit bank and each of its affiliated associations may enter into an agreement that specifies, for the purpose of computing permanent capital only, a dollar amount and/or percentage allotment of the association's allocated investment between the bank and the association. Section 615.5208 provides conditions for allotment agreements or defines allotments in the absence of such agreements.

(c) A Farm Credit Bank or agricultural credit bank and a recipient, other than an association, of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement must comply with the provisions of paragraph (b) of this section, except that, in the absence of an agreement, the allocated investment must be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of the bank that are purchased by a recipient are considered as permanent capital of the issuing bank.

(d) A bank for cooperatives and a recipient of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement must comply with the provisions of paragraph (b) of this section, except that, in the absence of an agreement, the allocated investment must be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of a bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(e) Where a bank or association invests in an association to capitalize a loan participation interest, the investing institution must deduct from its total capital an amount equal to its investment in the participating institution.

(f) The double-counting of capital by a service corporation chartered under section 4.25 of the Act and its stockholder institutions must be eliminated by deducting an amount equal to the institution's investment in the service corporation from its total capital.

(g) Each institution must deduct from its total capital an amount equal to all goodwill, whenever acquired.

(h) To the extent an institution has deducted its investment in another Farm Credit institution from its total capital, the investment may be eliminated from its asset base.

(i) Where a Farm Credit Bank and an association have an enforceable written agreement to share losses on specifically identified assets on a predetermined quantifiable basis, such assets must be counted in each institution's risk-adjusted asset base in the same proportion as the institutions have agreed to share the loss.

(j) The permanent capital of an institution must exclude the net effect of all transactions covered by the definition of "accumulated other comprehensive income" contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

(k) For purposes of calculating capital ratios under this part, deferred-tax assets are subject to the conditions, limitations, and restrictions described in § 615.5209.

(l) Capital may also need to be reduced for potential loss exposure on any recourse obligations, direct credit substitutes, residual interests, and credit-enhancing interest-only-strips in accordance with § 615.5210.

§ 615.5208 Allotment of allocated investments.

(a) The following conditions apply to agreements that a Farm Credit Bank or agricultural credit bank enters into with an affiliated association pursuant to § 615.5207(b)(2):

(1) The agreement must be for a term of 1 year or longer.

(2) The agreement must be entered into on or before its effective date.

(3) The agreement may be amended according to its terms, but no more frequently than annually except in the event that a party to the agreement is merged or reorganized.

(4) On or before the effective date of the agreement, a certified copy of the agreement, and any amendments thereto, must be sent to the field office of the Farm Credit Administration responsible for examining the institution. A copy must also be sent within 30 calendar days of adoption to the bank's other affiliated associations.

(5) Unless the parties otherwise agree, if the bank and the association have not entered into a new agreement on or before the expiration of an existing agreement, the existing agreement will automatically be extended for another 12 months, unless either party notifies the Farm Credit Administration in writing of its objection to the extension prior to the expiration of the existing agreement.

(b) In the absence of an agreement between a Farm Credit Bank or an agricultural credit bank and one or more associations, or in the event that an agreement expires and at least one party has timely objected to the continuation of the terms of its agreement, the following formula applies with respect to the allocated investments held by those associations with which there is no agreement (nonagreeing associations), and does not apply to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(1) The allotment formula must be calculated annually.

(2) The permanent capital ratio of the Farm Credit Bank or agricultural credit bank must be computed as of the date that the existing agreement terminates, using a 3-month average daily balance, excluding the allocated investment from nonagreeing associations but including any allocated investments of agreeing associations that are allotted to the bank

under applicable allocation agreements. The permanent capital ratio of each nonagreeing association must be computed as of the same date using a 3-month average daily balance, and must be computed excluding its allocated investment in the bank.

(3) If the permanent capital ratio for the Farm Credit Bank or agricultural credit bank calculated in accordance with § 615.5211 is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with § 615.5211 is 7 percent or above must be allotted 50 percent to the bank and 50 percent to the association.

(4) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with § 615.5211 is 7 percent or above, the allocated investment of each nonagreeing association whose capital ratio is below 7 percent must be allotted to the association until the association's capital ratio reaches 7 percent or until all of the investment is allotted to the association, whichever occurs first. Any remaining unallotted allocated investment must be allotted 50 percent to the bank and 50 percent to the association.

(5) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with § 615.5211 is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital ratio of 7 percent must be determined, and an amount of the allocated investment of each nonagreeing association must be allotted to the Farm Credit Bank or agricultural credit bank, as follows:

(i) If the total of the allocated investments of all nonagreeing associations is greater than the additional capital needed by the bank, the allocated investment of each nonagreeing association must be multiplied by a fraction whose numerator is the amount of capital needed by the bank and whose denominator is the total amount of allocated investments of the nonagreeing associations, and such amount must be allotted to the bank. Next, if the permanent capital ratio of any nonagreeing association is less than 7 percent, a sufficient amount of unallotted allocated investment must then be allotted to each nonagreeing association, as necessary, to increase its permanent capital ratio to 7 percent, or until all such remaining investment is allotted to the association, whichever occurs first. Any unallotted allocated investment still remaining must be allotted 50 percent to the bank and 50 percent to the nonagreeing association.

(ii) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the remaining allocated investments of the nonagreeing associations must be allotted to the bank.

(c) If a payment or part of a payment to the Farm Credit System Financial Assistance Corporation pursuant to section 6.9(e)(3)(D)(ii) of the Act would cause a bank to fall below its minimum permanent capital requirement, the bank and one or more association shall amend their allocation agreements to increase the allotment of the allocated investment to the bank sufficiently to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the associations would continue to meet their minimum permanent capital requirement. In the case of a nonagreeing association, the Farm Credit Administration may require a revision of the allotment sufficient to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the association would continue to meet its minimum permanent capital requirement. The Farm Credit Administration Board may, at the request of one or more of the institutions affected, waive the requirements of this paragraph if the Board deems it is in the overall best interest of the institutions affected.

§ 615.5209 Deferred-tax assets.

For purposes of calculating capital ratios under this part, deferred-tax assets are subject to the conditions, limitations, and restrictions described in this section.

(a) Each institution must deduct an amount of deferred-tax assets, net of any valuation allowance, from its assets and its total capital that is equal to the greater of:

(1) The amount of deferred-tax assets that is dependent on future income or future events in excess of the amount that is reasonably expected to be realized within 1 year of the most recent calendar quarter-end date, based on financial projections for that year, or

(2) The amount of deferred-tax assets that is dependent on future income or future events in excess of 10 percent of the amount of core surplus that exists before the deduction of any deferred-tax assets.

(b) For purposes of this calculation:

(1) The amount of deferred-tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences may not be deducted from assets and from equity capital.

(2) All existing temporary differences should be assumed to fully reverse at the calculation date.

(3) Projected future taxable income should not include net operating loss carryforwards to be used within 1 year or the amount of existing temporary differences expected to reverse within that year.

(4) Financial projections must include the estimated effect of tax-planning strategies that are expected to be implemented to minimize tax liabilities and realize tax benefits. Financial projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim date within the fiscal year.

(5) The deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred-tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred-tax effects are excluded, this treatment must be followed consistently over time.

§ 615.5210 Risk-adjusted assets.

(a) *Computation.* Each asset on the institution's balance sheet and each off-balance-sheet item, adjusted by the appropriate credit conversion factor in § 615.5212, is assigned to one of the risk categories specified in § 615.5211. The aggregate dollar value of the assets in each category is multiplied by the percentage weight assigned to that category. The sum of the weighted dollar values from each of the risk categories comprises "risk-adjusted assets," the denominator for computation of the permanent capital ratio.

(b) *Ratings-based approach.* (1) Under the ratings-based approach:

(i) Beginning 18 months after the effective date of this section, a position in a securitization that is unrated and guaranteed by a Government-sponsored agency is assigned to the appropriate risk-weight category based on the issuer credit rating of the agency.

(ii) A rated position in a securitization (provided it satisfies the criteria specified in paragraph (b)(3) of this section) is assigned to the appropriate risk-weight category based on its external rating.

(2) Provided they satisfy the criteria specified in paragraph (b)(3) of this

section, the following positions qualify for the ratings-based approach:

(i) Recourse obligations;

(ii) Direct credit substitutes;

(iii) Residual interests (other than credit-enhancing interest-only strips); and

(iv) Asset-or mortgage-backed securities.

(3) A position specified in paragraph (b)(2) of this section qualifies for a ratings-based approach provided it satisfies the following criteria:

(i) If the position is traded and externally rated, its long-term external rating must be one grade below investment grade or better (*e.g.*, BB or better) or its short-term external rating must be investment grade or better (*e.g.*, A–3, P–3). If the position receives more than one external rating, the lowest rating applies.

(ii) If the position is not traded and is externally rated,

(A) It must be externally rated by more than one NRSRO;

(B) Its long-term external rating must be one grade below investment grade or better (*e.g.*, BB or better) or its short-term external rating must be investment grade or better (*e.g.*, A–3, P–3 or better). If the ratings are different, the lowest rating applies;

(C) The ratings must be publicly available; and

(D) The ratings must be based on the same criteria used to rate traded positions.

(iii) Beginning 18 months after the effective date of this section, the position is unrated and is guaranteed by a Government-sponsored agency.

(c) *Positions in securitizations that do not qualify for a ratings-based approach.* The following positions in securitizations do not qualify for a ratings-based approach, whether or not they are guaranteed by Government-sponsored agencies. They are treated as indicated.

(1) For any residual interest that is not externally rated, the institution must deduct from capital and assets the face amount of the position (dollar-for-dollar reduction).

(2) For any credit-enhancing interest-only strip, the institution must deduct from capital and assets the face amount of the position (dollar-for-dollar reduction).

(3) For any position that has a long-term external rating that is two grades below investment grade or lower (*e.g.*, B or lower) or a short-term external rating that is one grade below investment grade or lower (*e.g.*, B or lower, Not Prime), the institution must deduct from capital and assets the face amount of the position (dollar-for-dollar reduction).

(4) Any recourse obligation or direct credit substitute (*e.g.*, a purchased subordinated security) that is not externally rated is risk weighted using the amount of the recourse obligation or direct credit substitute and the full amount of the assets it supports, *i.e.*, all the more senior positions in the structure. This treatment is subject to the low-level exposure rule set forth in paragraph (e) of this section. This amount is then placed into a risk-weight category according to the obligor or, if relevant, the guarantor or the nature of the collateral.

(5) Any stripped mortgage-backed security or similar instrument, such as an interest-only strip that is not credit-enhancing or a principal-only strip, is assigned to the 100-percent risk-weight category described in § 615.5211(d)(7).

(d) *Senior positions not externally rated.* For a position in a securitization that is not externally rated but is senior in all features to a traded position (including collateralization and maturity), an institution may apply a risk weight to the face amount of the senior position based on the traded position's external rating. This section will apply only if the traded position provides substantial credit support for the entire life of the unrated position.

(e) *Low-level exposure rule.* If the maximum contractual exposure to loss retained or assumed by an institution in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the credit-enhanced assets, the risk-based capital required under paragraph (c)(4) of this section is limited to the institution's maximum contractual exposure, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply when an institution provides credit enhancement beyond any contractual obligation to support assets it has sold.

(f) *Reservation of authority.* The FCA may, on a case-by-case basis, determine the appropriate risk weight for any asset or credit equivalent amount that does not fit wholly within one of the risk categories set forth in § 615.5211 or that imposes risks that are not commensurate with the risk weight otherwise specified in § 615.5211 for the asset or credit equivalent. In addition, the FCA may, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within one of the credit conversion factors set forth in § 615.5212 or that imposes risks that are not commensurate with the credit conversion factor otherwise specified in § 615.5212 for the item. In making this determination, the FCA will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in §§ 615.5211 or 615.5212, as well as other relevant factors.

§ 615.5211 Risk categories—balance sheet assets.

Section 615.5210(c) specifies certain balance sheet assets that are not assigned to the risk categories set forth below. All other balance sheet assets are assigned to the percentage risk categories as follows:

(a) *Category 1: 0 Percent*

(1) Cash (domestic and foreign).

(2) Balances due from Federal Reserve Banks and central banks in other OECD countries.

(3) Direct claims on, and portions of claims unconditionally guaranteed by, the U.S. Treasury, government agencies, or central governments in other OECD countries.

(4) Portions of local currency claims on, or unconditionally guaranteed by, non-OECD central governments (including non-OECD central banks), to the extent the institution has liabilities booked in that currency.

(5) Claims on, or guaranteed by, qualifying securities firms that are collateralized by cash on deposit in the institution or by securities issued or guaranteed by the United States (including U.S. Government agencies) or OECD central governments, provided that a positive margin of collateral is required to be maintained on such a claim on a daily basis, taking into account any change in the institution's exposure to the obligor or counterparty under the claim in relation to the market value of the collateral held in support of the claim.

(b) *Category 2: 20 Percent*

(1) Cash items in the process of collection.

(2) Loans and other obligations of and investments in Farm Credit institutions.

(3) All claims (long- and short-term) on, and portions of claims (long- and short-term) guaranteed by, OECD banks (excluding claims described in paragraphs (b)(7), (c)(4) or (d)(11) of this section).

(4) Short-term (remaining maturity of 1 year or less) claims on, and portions of short-term claims guaranteed by, non-OECD banks.

(5) Portions of loans and other claims conditionally guaranteed by the U.S. Treasury, government agencies, or central governments in other OECD countries and portions of local currency claims conditionally guaranteed by non-

OECD central governments to the extent that the institution has liabilities booked in that currency.

(6) Securities and other claims on, and portions of claims guaranteed by, Government-sponsored agencies (excluding positions in securitizations described in § 615.5210 and claims that are described in (b)(7), (c)(4) or (d)(11) of this section), without regard to issuer credit rating.

(7)(i) Until 18 months after this rule's effective date, assets or portions of assets covered by credit protection provided by Government-sponsored agencies and OECD banks through credit derivatives (*e.g.*, credit default swaps), loss purchase commitments, guarantees, and other similar arrangements;

(ii) Beginning 18 months after the effective date of this section, assets or portions of assets covered by credit protection provided by Government-sponsored agencies and OECD banks through credit derivatives (*e.g.*, credit default swaps), loss purchase commitments, guarantees, and other similar arrangements, provided the Government-sponsored agencies and OECD banks have an issuer credit rating in one of the two highest investment grade ratings from at least one NRSRO (if the credit protection provider is rated by more than one NRSRO the lowest rating applies).

(8) Portions of loans and other claims (including repurchase agreements) collateralized by securities issued or guaranteed by the U.S. Treasury, government agencies, Government-sponsored agencies or central governments in other OECD countries.

(9) Portions of loans and other claims collateralized by cash held by the institution or its funding bank.

(10) General obligation claims on, and portions of claims guaranteed by, the full faith and credit of states or other political subdivisions or OECD countries, including U.S. state and local governments.

(11) Claims on, and portions of claims guaranteed by, official multinational lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.

(12) Portions of claims collateralized by securities issued by official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or contributing member.

(13) Investments in shares of mutual funds whose portfolios are permitted to hold only assets that qualify for the zero or 20-percent risk categories.

(14) Recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips) and asset- or mortgage-backed securities that:

(i) Are externally rated in the highest or second highest investment grade category, *e.g.*, AAA, AA, in the case of long-term ratings, or the highest rating category, *e.g.*, A–1, P–1, in the case of short-term ratings; or

(ii)(A) Until 18 months after the effective date of this section, are unrated and are guaranteed by a Government-sponsored agency;

(B) Beginning 18 months after the effective date of this section, are unrated and are guaranteed by a Government-sponsored agency with an issuer credit rating in the highest or second highest investment grade category, *e.g.*, AAA or AA.

(15) Claims on, and claims guaranteed by, qualifying securities firms provided that:

(i) The qualifying securities firm, or at least one issue of its long-term debt, has a rating in one of the highest two investment grade rating categories from an NRSRO (if the securities firm or debt has more than one NRSRO rating the lowest rating applies); or

(ii) The claim is guaranteed by a qualifying securities firm's parent company with such a rating.

(16) Certain collateralized claims on qualifying securities firms without regard to satisfaction of the rating standard, provided that the claim arises under a contract that:

(i) Is a reverse repurchase/repurchase agreement or securities lending/borrowing transaction executed under standard industry documentation;

(ii) Is collateralized by liquid and readily marketable debt or equity securities;

(iii) Is marked-to-market daily;

(iv) Is subject to a daily margin maintenance requirement under the standard documentation; and

(v) Can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and the security or collateral agreement will not be stayed or avoided, under applicable law of the relevant country.

(17) Claims on other financing institutions provided that:

(i) The other financing institution qualifies as an OECD bank or it is owned and controlled by an OECD bank that guarantees the claim, or

(ii) The other financing institution has a rating in one of the highest three investment-grade rating categories from a NRSRO or the claim is guaranteed by a parent company with such a rating, and

(iii) The other financing institution has endorsed all obligations it pledges to its funding Farm Credit bank with full recourse.

(c) *Category 3: 50 Percent*

(1) All other investment securities with remaining maturities under 1 year, if the securities are not eligible for the ratings-based approach or subject to the dollar-for-dollar capital treatment.

(2) Qualified residential loans.

(3) Recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips) and asset- or mortgage-backed securities that:

(i) Are rated in the third highest investment grade category, *e.g.*, A, in the case of long-term ratings, or the second highest rating category, *e.g.*, A–2, P–2, in the case of short-term ratings; or

(ii) Beginning 18 months after the effective date of this section, are unrated and are guaranteed by a Government-sponsored agency with an issuer credit rating in the third highest investment grade category, *e.g.*, A.

(4) Beginning 18 months after the effective date of this section, assets or portions of assets covered by credit protection provided by Government-sponsored agencies and OECD banks through credit derivatives (*e.g.*, credit default swaps), loss purchase commitments, guarantees, and other similar arrangements, provided the Government-sponsored agencies and OECD banks have an issuer credit rating in the third highest investment grade category, *e.g.*, A, from at least one NRSRO (if they are rated by more than one NRSRO the lowest rating applies).

(5) Revenue bonds or similar obligations, including loans and leases, that are obligations of state or political subdivisions of the United States or other OECD countries but for which the government entity is committed to repay the debt only out of revenue from the specific projects financed.

(6) Claims on other financing institutions that:

(i) Are not covered by the provisions of paragraph (b)(17) of this section, but otherwise meet similar capital, risk identification and control, and operational standards, or

(ii) Carry an investment-grade or higher NRSRO rating or the claim is guaranteed by a parent company with such a rating, and

(iii) The other financing institution has endorsed all obligations it pledges to its funding Farm Credit bank with full recourse.

(d) *Category 4: 100 Percent.* This category includes all assets not specified in the categories above or below nor deducted dollar-for-dollar from capital

and assets as discussed in § 615.5210(c). This category comprises standard risk assets such as those typically found in a loan or lease portfolio and includes:

(1) All other claims on private obligors;

(2) Claims on, or portions of claims guaranteed by, non-OECD banks with a remaining maturity exceeding 1 year; and

(3) Claims on, or portions of claims guaranteed by, non-OECD central governments that are not included in paragraphs (a)(4) or (b)(4) of this section, and all claims on non-OECD state and local governments.

(4) Industrial-development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest.

(5) Premises, plant, and equipment; other fixed assets; and other real estate owned.

(6) Recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips) and asset- or mortgage-backed securities that:

(i) Are rated in the lowest investment grade category, *e.g.*, BBB, in the case of long-term ratings, or the third highest rating category, *e.g.*, A–3, P–3, in the case of short-term ratings; or

(ii) Beginning 18 months after the effective date of this section, are unrated and are guaranteed by a Government-sponsored agency that has an issuer credit rating in or below the lowest investment grade category, *e.g.*, BBB, or that is unrated.

(7) Stripped mortgage-backed securities and similar instruments, such as interest-only strips that are not credit-enhancing and principal-only strips (including such instruments guaranteed by Government-sponsored agencies).

(8) Investments in Rural Business Investment Companies.

(9) If they have not already been deducted from capital:

(i) Investments in unconsolidated companies, joint ventures, or associated companies.

(ii) Deferred-tax assets.

(iii) Servicing assets.

(10) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in any other category;

(11) Beginning 18 months after the effective date of this section, assets or portions of assets covered by credit protection provided by Government-sponsored agencies and OECD banks through credit derivatives (*e.g.*, credit default swaps), loss purchase commitments, guarantees, and other similar arrangements, provided the Government-sponsored agencies and OECD banks have an issuer credit rating in the lowest investment grade category, *e.g.*, BBB, or below from at least one NRSRO (if they are rated by more than one NRSRO the lowest rating applies) or are unrated;

(12) Claims on other financing institutions that do not otherwise qualify for a lower risk-weight category under this section; and

(13) All other assets not specified above, including but not limited to leases and receivables.

(e) *Category 5: 200 Percent.* Recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips) and asset- or mortgage-backed securities that are rated one category below the lowest investment grade category, *e.g.*, BB.

§ 615.5212 Credit conversion factors—off-balance sheet items.

(a) The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. For most off-balance sheet items, the face amount is first multiplied by a credit conversion factor. (In the case of direct credit substitutes and recourse obligations the full amount of the assets enhanced are multiplied by a credit conversion factor). The resultant credit equivalent amount is assigned to the appropriate risk-weight category described in § 615.5211 according to the obligor or, if relevant, the guarantor or the collateral.

(b) Conversion factors for various types of off-balance sheet items are as follows:

(1) *0 Percent*

(i) Unused commitments with an original maturity of 14 months or less;

(ii) Unused commitments with an original maturity greater than 14 months if:

(A) They are unconditionally cancellable by the institution; and

(B) The institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition before each drawing under the lending arrangement.

(2) *20 Percent.* Short-term, self-liquidating, trade-related contingencies, including but not limited to commercial letters of credit.

(3) *50 Percent*

(i) Transaction-related contingencies (*e.g.*, bid bonds, performance bonds, warranties, and performance-based standby letters of credit related to a particular transaction).

(ii) Unused loan commitments with an original maturity greater than 14 months, including underwriting commitments and commercial credit lines.

(iii) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements pursuant to which the institution's customer can issue short-term debt obligations in its own name, but for which the institution has a legally binding commitment to either:

(A) Purchase the obligations its customer is unable to sell by a stated date; or

(B) Advance funds to its customer if the obligations cannot be sold.

(4) *100 Percent*

(i) The full amount of the assets supported by direct credit substitutes and recourse obligations for which an institution directly or indirectly retains or assumes credit risk. For risk participations in such arrangements acquired by the institution, the full amount of assets supported by the main obligation multiplied by the acquiring institution's percentage share of the risk participation. The capital requirement under this paragraph is limited to the institution's maximum contractual exposure, less any recourse liability account established under generally accepted accounting principles.

(ii) Acquisitions of risk participations in bankers acceptances.

(iii) Sale and repurchase agreements, if not already included on the balance sheet.

(iv) Forward agreements (*i.e.*, contractual obligations) to purchase assets, including financing facilities with certain drawdown.

(c) *Credit equivalents of interest rate contracts and foreign exchange contracts.* (1) Credit equivalents of interest rate contracts and foreign exchange contracts (except single-currency floating/floating interest rate swaps) are determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the notional principal amount by the following credit conversion factors as appropriate.

CONVERSION FACTOR MATRIX

[In Percent]

Remaining maturity	Interest rate	Exchange rate	Commodity
1 year or less	0.0	1.0	10.0
Over 1 to 5 years	0.5	5.0	12.0
Over 5 years	1.5	7.5	15.0

(2) For any derivative contract that does not fall within one of the categories in the above table, the potential future credit exposure is be calculated using the commodity conversion factors. The net current exposure for multiple derivative contracts with a single counterparty and subject to a qualifying bilateral netting contract is the net sum of all positive and negative mark-to-market values for each derivative contract. The positive sum of the net current exposure is added to the adjusted potential future credit exposure for the same multiple contracts with a single counterparty. The adjusted potential future credit exposure is computed as $A_{net} = (0.4 \times A_{gross}) + 0.6 (NGR \times A_{gross})$ where:

(i) A_{net} is the adjusted potential future credit exposure;

(ii) A_{gross} is the sum of potential future credit exposures determined by multiplying the notional principal amount by the appropriate credit conversion factor; and

(iii) NGR is the ratio of the net current credit exposure divided by the gross current credit exposure determined as the sum of only the positive mark-to-markets for each derivative contract with the single counterparty.

(3) Credit equivalents of single-currency floating/floating interest rate swaps are determined by their replacement cost (mark-to-market).

Subpart K—Surplus and Collateral Requirements

10. Amend § 615.5301 by revising paragraphs (b)(3), (i)(2), and (i)(8) to read as follows:

§ 615.5301 Definitions.

(b) * * *

(3) The deductions that must be made by an institution in the computation of its permanent capital pursuant to § 615.5207(e), (f), (h), and (j) shall also be made in the computation of its core surplus. Deductions required by § 615.5207(a) shall also be made to the extent that they do not duplicate deductions calculated pursuant to this section and required by § 615.5330(b)(2).

* * * * *

(i) * * *

(2) Allocated equities, including allocated surplus and stock, that are not subject to a plan or practice of revolvement or retirement of 5 years or less and are eligible to be included in permanent capital pursuant to § 615.5201; and

* * * * *

(8) Any deductions made by an institution in the computation of its permanent capital pursuant to § 615.5207 shall also be made in the computation of its total surplus.

* * * * *

§ 615.5330 [Amended]

11. Amend § 615.5330 by removing the reference "§ 615.5210(f)" and adding in its place "§ 615.5210" in paragraphs (a)(2) and (b)(3).

PART 620—DISCLOSURE TO SHAREHOLDERS

12. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); secs. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

§ 620.1 [Amended]

13. Amend § 620.1(j) by removing the reference "§ 615.5201(l)" and adding in its place "§ 615.5201."

Dated: July 30, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–17570 Filed 8–5–04; 8:45 am]

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August 6, 2004

Part III

Securities and Exchange Commission

17 CFR Parts 240, 241, and 242
Short Sales; Final Rule and Notice

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 241 and 242

[Release No. 34–50103; File No. S7–23–03]

RIN 3235–AJ00

Short Sales

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting new Regulation SHO, under the Securities Exchange Act of 1934 ("Exchange Act"). Regulation SHO defines ownership of securities, specifies aggregation of long and short positions, and requires broker-dealers to mark sales in all equity securities "long," "short," or "short exempt." Regulation SHO also includes a temporary rule that establishes procedures for the Commission to suspend temporarily the operation of the current "tick" test and any short sale price test of any exchange or national securities association, for specified securities. Regulation SHO also requires short sellers in all equity securities to locate securities to borrow before selling, and also imposes additional delivery requirements on broker-dealers for securities in which a substantial number of failures to deliver have occurred. The Commission is also adopting amendments that remove the shelf offering exception, and issuing interpretive guidance addressing sham transactions designed to evade Regulation M.

The Commission is deferring consideration of the proposal to replace the current "tick" test with a new uniform bid test restricting short sales to a price above the consolidated best bid, and also deferring consideration of the proposed exceptions to the uniform bid test. The Commission will reconsider any further action on these proposals after the completion of the pilot established by Regulation SHO.

DATES: *Effective Date:* September 7, 2004 except part 241 will be effective August 6, 2004 and § 242.202T will be effective from September 7, 2004 to August 6, 2007.

Compliance Date: The compliance date for §§ 242.200 and 203 is January 3, 2005. The compliance date for § 242.202T is the same as its effective date, September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001, at (202) 942–0772: James Brigagliano, Assistant Director, Lillian Hagen, Alexandra Albright, and Elizabeth Sandoe, Special Counsels, or Peter Chepucavage, Attorney Fellow.

SUPPLEMENTARY INFORMATION: The Commission is adopting Rules 200, 202T, and 203 of Regulation SHO [1] and amending Rule 105 of Regulation M,[2] and Rule 10a–1[3] under the Exchange Act.

Table of Contents

I. Introduction

A short sale is the sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. In order to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by purchasing equivalent securities on the open market, or by using an equivalent security it already owned, and returning the security to the lender. In general, short selling is used to profit from an expected downward price movement, to provide liquidity in response to unanticipated demand, or to hedge the risk of a long position in the same security or in a related security.

On October 28, 2003, the Commission proposed Regulation SHO, which would replace Rules 3b–3, 10a–1, and 10a–2 under the Exchange Act.[4] As proposed, Regulation SHO contained the following rules:

- Rule 200, which would replace Rule 3b–3 and: (1) Define the term "short sale" to allow multi-service broker-dealers to aggregate their positions by separate trading units; and (2) define ownership of a security to address security futures products and unconditional contracts to purchase securities;
- Rule 201, which would replace Rule 10a–1 and apply a uniform price test for exchange-listed and Nasdaq NMS securities based upon the consolidated best bid instead of the current tick test based upon the last reported sale;
- Rule 202T, which would establish a procedure for the Commission to suspend on a temporary basis the operation of Rule 10a–1 and any short sale price test of any exchange or national securities association for specified securities; and
- Rule 203, which would replace current Rule 10a–2, incorporate provisions of the existing self-regulatory organization ("SRO") "locate" rules into a uniform Commission rule applicable to all equity securities, wherever they are traded, and impose additional delivery requirements on broker-dealers for securities in which a substantial amount of failures to deliver have occurred.

We also proposed revisions to Rule 105 of Regulation M (short selling in connection with a public offering) to eliminate the current shelf offering exception, and provide interpretive guidance addressing sham transactions designed to evade the rule.

We received letters from 462 commenters in response to proposed Regulation SHO.[5] The responses varied widely, with some commenters arguing for more stringent short sale regulation and others advocating the elimination of many or all short sale restrictions.

After considering the comments received, and upon further examination of current market practices and the purposes underlying short sale

[1] 17 CFR 242.200 through 242.203.

[2] 17 CFR 242.105.

[3] 17 CFR 240.10a–1.

[4] Securities Exchange Act Release No. 48709 (October 28, 2003), 68 FR 62972 (November 6, 2003) ("Proposing Release").

[5] The comment letters and a comprehensive summary of the comments are available for inspection in the Commission's Public Reference Room in File No. S7–23–03, or may be viewed at *http://www.sec.gov/rules/proposed/s72303.shtml*. The 438 different letters from 462 commenters reflect the number of different letters received; thus form letters, referred to as "letter types" on the Commission's Web site (*www.sec.gov*), counted as one letter. For example, 18 individuals sent Letter Type A, 21 individuals sent Letter Type B, 18 individuals sent Letter Type C, 19 individuals sent Letter Type D, two individuals sent Letter Type E, two individuals sent Letter Type F, 15 individuals sent Letter Type G, two individuals sent Letter Type H, 15 individuals sent Letter Type I, and four individuals sent Letter Type J. In addition, although submitted under Regulation SHO, Letter Types H, I, and J substantively refer to amendments to NASD Rule 3370. *See* Securities Exchange Act Release No. 49285 (February 19, 2004), 69 FR 8717 (February 25, 2004). They are included in the total here because commenters indicated that they were submitted in response to proposed Regulation SHO.

regulation,[6] we have decided to adopt certain provisions of proposed Regulation SHO and to defer consideration of other provisions. We are adopting proposed Rule 200, with some minor modifications. Rule 200, which incorporates Rule 3b–3, defines ownership for short sale purposes, and clarifies the requirement to determine a seller's net aggregate position. We have also decided to incorporate into Rule 200 the proposed requirements to mark sales in all equity securities "long," "short," or "short exempt."[7] We believe that the ownership, aggregation, and marking requirements are important for all short sale regulations.

We are also adopting Rule 202T, which creates a procedure for the Commission to establish, through a separate order, a pilot program pursuant to which the Commission may exclude designated securities from the operation of the tick test of Rule 10a–1 and any short sale price test rule of any exchange or national securities association ("pilot"). Concurrently with this release, we are issuing an order establishing a pilot program employing the procedures of Rule 202T.[8] We have determined not to proceed with the uniform bid test of proposed Rule 201 until we have obtained the results of the pilot. Rule 10a–1, as well as all SRO price tests, will be maintained in present form for securities not included in the pilot.

We believe that conducting a pilot pursuant to Rule 202T is an important component of evaluating the overall effectiveness of price test restrictions on short sales. The pilot will allow us to obtain data on the impact of short selling in the absence of a price test to assist in determining, among other things, the extent to which a price test is necessary to further the objectives of short sale regulation, to study the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity, and to obtain empirical data to help assess whether a short sale price test should be removed, in part or in whole, for some or all securities, or if retained, should be applied to additional securities.

The Commission's Office of Economic Analysis ("OEA") will gather and analyze data during the pilot period to assess trading behavior in the absence of short sale price restrictions. Additionally, researchers are encouraged to provide the Commission with their own empirical analyses of the pilot.[9]

We are adopting additional proposals in Regulation SHO, which we believe are necessary and appropriate regardless of whether short sales are subject to a price test, to clarify provisions and to address commenters' concerns. As adopted, Rule 203 creates a uniform Commission rule requiring broker-dealers, prior to effecting short sales in all equity securities, to "locate" securities available for borrowing, and imposes additional delivery requirements on broker-dealers for securities in which a substantial amount of failures to deliver have occurred ("threshold securities"). We believe that strong and uniform requirements in this area will reduce short selling abuses. The locate and delivery requirements will act as a restriction on so-called "naked" short selling.[10]

We are also adopting amendments to Rule 105 of Regulation M in order to eliminate the shelf exception. In the Proposing Release we sought comment on how to address "sham" transactions that are structured to give the false appearance that short sales are being covered with open market shares, when in fact, the short seller has arranged to cover the short sale with offering shares, thereby violating Rule 105. We are issuing interpretive guidance relating to "sham" transactions that violate Rule 105.

II. Price Test—Proposed Rule 201

We proposed Rule 201 of Regulation SHO to replace Rule 10a–1's tick test with a price test using the consolidated best bid as the reference point for permissible short sales. Specifically, subparagraph (b) of proposed Rule 201 would have required that all short sales in covered securities be effected at a price at least one cent above the consolidated best bid at the time of execution.[11]

The comments we received on the proposed price test varied widely. Some commenters (including the Investment Company Institute ("ICI"), North American Securities Administrators Association ("NASAA"); and many smaller investors) advocated more stringent short sale regulation. These commenters, favored extending the proposed bid test to smaller issuers and urged imposition of stricter locate and delivery requirements. Other commenters, despite supporting many of the initiatives, argued for maintaining the current "tick" test. The New York Stock Exchange ("NYSE"), a proponent of retaining the tick test, also contended that the NYSE should be allowed to maintain a tick test for short sales on the exchange even if the Commission determines to eliminate price restrictions on short sales.[12] Additionally, the NYSE letter stated that it was representing the views of its issuers. None of these issuers submitted comments separately.[13]

A number of commenters, including some of the largest broker-dealers (*e.g.*, J.P. Morgan, UBS Securities, Lehman Brothers), the Securities Industry Association ("SIA"), and one regional exchange, Chicago Stock Exchange ("CHX"), advocated that the Commission consider further the necessity of any price test (either the current tick test or the proposed bid test). Generally, these commenters supported the pilot as a good first step, but argued that the pilot should be shortened from the proposed two-year duration to one year to expedite this process. These commenters, and other broker-dealers (*e.g.*, Goldman Sachs, Citigroup, Merrill Lynch, and Morgan Stanley), raised various concerns about the proposed price test, and opposed the Commission requiring market

[6] In adopting the tick test, the Commission sought to achieve three objectives: (i) allowing relatively unrestricted short selling in an advancing market; (ii) preventing short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down; and (iii) preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. *See* Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 (December 28, 1976). As we stated in the Proposing Release, short selling provides the market with at least two important benefits: market liquidity and pricing efficiency. Proposing Release, 68 FR at 62974.

[7] This marking requirement had been proposed in Rule 201(c). The marking requirements as adopted in Rule 200 apply to short sales in all equity securities, in contrast to paragraphs (c) and (d) of current Rule 10a–1, which only apply to exchange-listed securities.

[8] Securities Exchange Act Release No. 50104 (July 28, 2004).

[9] The Commission expects to make information obtained during the pilot publicly available.

[10] "Naked" short selling, while not defined in the federal securities laws or SRO rules, generally refers to selling short without having borrowed the securities to make delivery.

[11] Additionally, the Commission sought comment on an alternative price test that would allow short selling at a price equal to or above the consolidated best bid if the current best bid is above the previous bid (*i.e.*, an upbid). Under this alternative, short selling would be restricted to a price at least one cent above the consolidated best bid if the current best bid is below the previous bid (*i.e.*, a downbid).

[12] The Specialist Association also argued for maintaining the current tick test on exchange-listed securities, and also opposed the proposed pilot program, arguing that it is likely to have unwarranted and unintended adverse effects on the securities included in the pilot, and could disadvantage these issuers compared to peer issuers that remain subject to the tick test.

[13] The letter from the American Society of Corporate Secretaries ("ASCS"), an organization of corporate issuers, did not opine on the pilot or the proposed bid test, but rather focused exclusively on the effects of short selling on proxy voting. The Commission expects to determine at a future date whether to take action with regard to that issue.

participants to expend time and resources to re-program systems for the proposed bid test prior to the completion of a pilot, especially if a possible outcome following the completion of the pilot is the removal of a price test altogether based on the results of the pilot.[14]

We have decided that the prudent course of action is to defer consideration of the proposed uniform bid test until after the conclusion of any pilot established pursuant to Rule 202T. As noted, the purpose of the pilot is to assist the Commission in considering alternatives, such as: (1) Eliminating a Commission-mandated price test for an appropriate group of securities, which may be all securities; (2) adopting a uniform bid test, and any exceptions, with the possibility of extending a uniform bid test to securities for which there is currently no price test; or (3) leaving in place the current price tests.[15]

III. Rule 200—Definitions and Marking Requirements

We are adopting Rule 200 to incorporate Rule 3b–3 of the Exchange Act,[16] with some amendments to the rule's current text. One of the key changes in Rule 200 is the requirement to mark sell orders in all equity securities "long," "short," or "short exempt." Additionally, Rule 200 allows broker-dealers to calculate net positions in a particular security within defined trading units; incorporates the block-positioner exception from current Rule 10a–1(e)(13); and codifies prior interpretations related to the ownership of security futures products, and the unwinding of certain index arbitrage positions.[17]

A. Ownership

1. Unconditional Contracts To Purchase Securities—Rule 200(b)(2)

As proposed, paragraph (b) of Rule 200 would have amended the definition of unconditional contract to require the specification of a fixed price and amount of securities to be purchased in order for a person to claim ownership of the securities underlying the contract. Given our decision to maintain the status quo on the short sale price test in Rule 10a–1, we have determined not to amend the current definition of "unconditional contract" found in Rule 3b–3(b). Our decision primarily relates to our intent to preserve the operation of the current price test during the application of Rule 202T's pilot program. Amending qualifications for ownership of securities would affect net long positions, and thus have an impact on various trading strategies. However, we will continue to consider whether any future changes to the unconditional contract provision are appropriate, and may revisit our decision upon termination of any pilot that will be implemented pursuant to Rule 202T.

2. Ownership of Securities Underlying Securities Futures Products—Rule 200(b)(6)

We proposed Rule 200(b)(6) to achieve consistency with existing Commission guidance that defines when a person shall be deemed to own a security underlying a security futures contract.[18] The proposed amendment provided that a person holding a long security futures position is not considered to own the underlying security, for Rule 200 purposes, until the security future stops trading and the future will be physically settled. In the Proposing Release, we stated that termination of trading is the moment at which an open position in a security future, either a long or short position, can no longer be closed or liquidated either by buying or selling an opposite position. At that point, the person obligated to deliver would be considered short, and a person entitled to acquire the securities would be considered long.[19]

One commenter addressed the Rule 200 proposal and asserted that a person who holds a security future, which obligates the person to take delivery of the underlying securities by physical settlement, should be considered long the securities.[20] Additionally, the commenter argued that securities futures products are "materially different" from options, rights, warrants, and convertibles, which merely give the holder the right, but not the obligation, to acquire the securities.

We believe that the ownership language in Rule 3b–3 implicitly contemplates that there is a high degree of certainty that the person presently will obtain possession of the security. The distant time element of a futures product is inconsistent with this position. Moreover, the sale of securities related to a future-dated delivery contract necessitates borrowing for delivery, thus rendering the sale of the related securities a short sale. Therefore, a futures contract is more analogous to other derivative products than to an unconditional contract.

Therefore, we are adopting the proposed language relating to ownership of securities underlying a security futures contract. This interpretation is consistent with existing Commission guidance concerning the manner in which Rule 3b–3 addresses instances where a person owns a derivative instrument that entitles the person to acquire securities underlying the instrument, *e.g.*, options, rights, warrants, convertibles, and security futures.[21]

3. Aggregation Units—Rule 200(f)

We are adopting aggregation unit netting in Rule 200(f). Historically, a multi-service broker-dealer was considered one entity, so all of its positions were aggregated to determine the firm's net position.[22] However, firm-wide aggregation often interfered with the trading of independent units within the broker-dealer. The staff of the Division of Market Regulation therefore issued a no-action letter allowing multi-service broker-dealers to aggregate their positions within defined trading units.[23] We proposed to incorporate trading unit aggregation, for purposes of determining the trading unit's net position, into Regulation SHO.[24]

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[14] *See e.g.*, letter from The American Stock Exchange ("Amex"); letter from CHX. Amex estimated that it would take the exchange three and a half months to make the necessary surveillance changes and would cost roughly $125,000. CHX represented that the aggregate cost to the exchange and its floor members would amount to at least $500,000.

[15] As a result, all existing exceptions and exemptions from Rule 10a–1 remain in effect. In addition, at this time, because we are not adopting the proposed uniform bid test, we have deferred a decision on our proposal to codify prior exemptive relief. *See* Proposing Release, Section VII.

[16] Rule 3b–3 sets forth the definition of "short sale" and identifies the specific instances for determining a long position. 17 CFR 240.3b–3.

[17] *See* Proposing Release, Section X.

[18] *See Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules thereunder to Trading in Security Futures Products*, Securities Exchange Act Release No. 46101 (June 21, 2002), 67 FR 43234 (June 27, 2002) ("Guidance Release").

[19] Guidance Release at II.B.2.; Proposing Release at n. 179.

[20] *See* letter from LEK Securities.

[21] *See* Guidance Release.

[22] Under Rule 3b–3, a seller of an equity security subject to Rule 10a–1 must aggregate all of its positions in that security in order to determine whether the seller has a "net long position" in the security. 17 CFR 240.3b–3. *See also* Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120 (October 3, 1983) (to determine whether a person has a "net long position" in a security, all accounts must be aggregated); Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949, 17950 (aggregation must be based on a listing of securities positions in all proprietary accounts as determined at least once each trading day).

[23] 1998 SEC No-Act LEXIS 1038 (November 23, 1998) (aggregation unit netting no-action letter).

[24] For firms not relying on the aggregation unit exception, we understand that available technology allows firms to aggregate their firm-wide positions on a real-time basis. To the extent that a firm is unable to accomplish real-time aggregation on a firm-wide basis, it should be able to demonstrate

As proposed and adopted, Rule 200(f) permits trading unit aggregation if a registered broker-dealer meets the following requirements: (1) The broker-dealer has a written plan of organization that identifies each aggregation unit, specifies its trading objective(s), and supports its independent identity;[25] (2) each aggregation unit within the firm determines at the time of each sale its net position for every security that it trades; (3) all traders in an aggregation unit pursue only the trading objectives or strategy(ies) of that aggregation unit; and (4) individual traders are assigned to only one aggregation unit at any time.[26]

We believe that these conditions are necessary to prevent potential abuses associated with establishing aggregation units within multi-service broker-dealers. Specifically, we require a written plan of organization as a means to demonstrate that each unit is independent and engaged in separate trading strategies without regard to other trading units. Aggregation of the unit's net position prior to each sale limits the potential for abuse associated with coordination among units. The final two conditions, limiting traders to the pursuit of the trading strategies or objectives of the particular aggregation unit and the assignment to only one aggregation unit at a time, are both designed to maintain the independence of the units. Thus, if two or more traders or groups of traders (*i.e.*, desks) within the same firm coordinate their trading activities, those traders or groups must be in the same aggregation unit.[27]

4. Block Positioners and Liquidation of Index Arbitrage Positions—Rule 200(d) and (e)

As proposed, we are incorporating the block positioner exception (currently found in subsection (e)(13) of Rule 10a–1) into Rule 200(d) because this provision directly relates to the calculation of a broker-dealer's net position. Block positioning occurs when a broker-dealer acts as principal in taking all or part of a block order placed by a customer in order to facilitate a transaction that might otherwise be difficult to effect in the ordinary course of trading.[28] The block positioner may then seek to sell the securities so acquired. The exemption for block positioners addresses the interaction between the price test under Rule 10a–1 and the determination of the seller's net position under Rule 3b–3.[29] A broker-dealer that engages in block-positioning will continue to be able to disregard economically neutral bona-fide arbitrage, risk arbitrage, and bona-fide hedge positions involving short stock components in determining its net position in the block-positioned security.

Under subparagraph (e) of Rule 200, we are adopting relief for sales effected in connection with the unwinding of an index arbitrage position. Rule 200(e) provides a limited relaxation of the requirement that a person selling a security aggregate all of the person's positions in that security to determine whether he or she has a net long position. In a manner similar to that permitted under the block positioner exception in Rule 200(d), this provision allows market participants to liquidate (or unwind) certain existing index arbitrage positions involving long baskets of stocks and short index futures or options without aggregating short stock positions in other proprietary accounts if and to the extent that those short stock positions are fully hedged. To qualify for the relief, the liquidation of the index arbitrage position must relate to a securities index that is the subject of a financial futures contract (or options on such futures) traded on a contract market, or a standardized options contract,[30] notwithstanding that such person may not have a net long position in that security.[31]

Aggregation relief for index arbitrage positions was originally granted in a staff no-action letter.[32] Proposed Rule 200(d) contained additional provisions that were not contained in the prior no-action letter. Three commenters supported the relief, but stated that the relief was too limited.[33] Generally, these commenters preferred the relief as provided by the Merrill Lynch letter. We have carefully reviewed the comments and have determined to include the additional provisions in connection with the liquidation of an index arbitrage position. The Commission still believes that a market decline restriction is appropriate and in the public interest, and will avoid incremental selling pressure at the close of trading on a volatile trading day and at the opening of trading on the following day, since trading activity at these times may have a substantial effect on the market's short-term direction.

As proposed and adopted, the exception for unwinding index arbitrage positions provided in Rule 200(e) is limited to the following conditions: (1) The index arbitrage position involves a long basket of stock and one or more short index futures traded on a board of trade or one or more standardized options contracts; (2) such person's net short position is solely the result of one or more short positions created and maintained in the course of bona-fide arbitrage, risk arbitrage, or bona-fide hedge activities; and (3) the sale does not occur during a period commencing at the time that the Dow Jones Industrial Average ("DJIA") has declined below its closing value on the previous trading day by at least two percent and terminating upon the establishment of the closing value of the DJIA on the next succeeding trading day during which the DJIA has not declined by two percent or more from its closing value on the previous day. If a market decline triggers the application of subparagraph (e)(2), a broker-dealer must aggregate all of its other positions in that security to

why such aggregation is impracticable and that the alternative method employed (*e.g.*, on a daily basis) accurately reflects firm ownership positions.

[25] As noted in the Proposing Release, the independence of the units would be evidenced by a variety of factors, such as separate management structures, location, business purpose, and profit and loss treatment.

[26] Two commenters focused on expanding aggregation unit netting to non-broker-dealers. *See* letters from LEK Securities; MFA. The Commission has determined not to extend aggregation unit netting to entities that lack self-regulatory oversight and are not subject to Commission examination. The lack of regulatory oversight may facilitate the creation of units that are not truly independent or separate.

[27] As with any rule, broker-dealers relying on this exception should be prepared to monitor for compliance with its conditions, and maintain records documenting such compliance.

[28] Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (noting that the Commission has long recognized the important role that block positioning plays in providing liquidity for large securities transactions and in maintaining fair and orderly markets).

[29] *See* Securities Exchange Act Release No. 20230 (September 27, 1983) 48 FR 45119 (October 3, 1983) (proposing the block positioner exception); *see also* Securities Exchange Act Release No. 20715 (March 6, 1984), 49 FR 9414 (March 13, 1984) (adopting the block positioner exception).

[30] "Standardized options contract" is defined in Rule 9b–1(a)(4) under the Exchange Act. 17 CFR 240.9b–1(a)(4).

[31] The Commission proposed to codify this relief in 1992, but the proposal was not adopted. *See* Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415 (June 9, 1992).

[32] *See* letter re: Merrill Lynch, Pierce, Fenner & Smith, Inc. (December 17, 1986); Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 (April 30, 1990) (clarifying and emphasizing certain aspects of the limited relief granted in the Merrill Lynch letter). The Merrill Lynch letter provided no-action relief if: (i) The firm has a long stock position as part of an index arbitrage position; (ii) the stock is being sold in the course of "unwinding" an index arbitrage position; and (iii) the sale would be a short sale, as defined in Rule 3b–3, solely as a result of the netting of the index arbitrage long position with one or more short positions created in the course of bona-fide hedge activities.

[33] *See* letters from LEK Securities; Willkie Farr & Gallagher, LLP ("Willkie Farr") (sent on behalf of J.P. Morgan Securities and UBS Securities).

determine whether the seller has a net long position.[34]

B. Order-Marking Requirements—Rule 200(g)

We are adopting the new order-marking requirements proposed in Rule 201(c) and incorporating them into Rule 200(g). Since the new marking requirements apply to all equity securities, not just exchange-listed securities, we are removing them from current Rule 10a–1. The new order-marking requirements differentiate between "long," "short," and "short exempt" orders for all exchange-listed and over-the-counter equity securities.

Under the former marking requirements in Rule 10a–1(d), a broker-dealer could only mark an order to sell a security "long" if the security was carried in the account for which the sale is to be effected, or the broker-dealer is informed that the seller owns the security to be sold, and will deliver the security to the account for which the sale is effected as soon as possible without undue inconvenience or expense.[35] We had proposed changing the marking requirement so that a sale could only be marked "long" if the seller owns the security being sold and either the security to be delivered is in the physical possession or control of the broker-dealer, or will be in the physical possession or control of the broker-dealer prior to settlement of the transaction.

As adopted, an order can be marked "long" when the seller owns the security being sold and the security either is in the physical possession or control of the broker-dealer, or it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than settlement. We added the language "reasonably expected" because we acknowledge that it may be difficult for a person to know with certainty at the time of sale that a security will be in the possession or control of the broker-dealer prior to settlement. However, if a person owns the security sold and does not reasonably believe that the security will be in the possession or control of the broker-dealer prior to settlement, the sale should be marked "short." The sale could be marked "short exempt" if the seller is entitled to rely on an exception from the tick test of Rule 10a–1, or the price test of an exchange or national securities association.[36] Short sales of pilot securities effected during any pilot period should be marked "short exempt."

The new marking requirements will eliminate the prior discrepancy between how Rule 3b–3 defined a short sale and the marking provisions previously found in Rule 10a–1. In addition, the new marking requirements should facilitate the surveillance and monitoring of compliance with Rule 10a–1. The change to the marking requirements will provide information that shows when exceptions from Rule 10a–1 are used.

IV. Rule 202T—Pilot Program

A. General

We proposed Rule 202T to provide a procedure for the Commission to suspend, on a pilot basis, the trading restrictions of the Commission's short sale price test, as well as any short sale price test of any exchange or national securities association, for short sales in such securities as the Commission designates by order as necessary or appropriate in the public interest and consistent with the protection of investors, after giving due consideration to the security's liquidity, volatility, market depth and trading market.[37] We stated our belief that temporary suspension of Commission and SRO price tests is an essential component of evaluating the overall effectiveness of such restrictions, and would permit the collection of data on the impact of short selling in the absence of a price test.

Overall, thirty-eight commenters expressed support for a pilot program.[38] Some commenters opposed any suspension of a price test for short sales, and expressed concern about possible pricing anomalies and disparate trading activity in securities within the same industry where one security is subject to a price test and another is not.[39] We considered these suggestions together with other comments that not only supported the pilot, but recommended that the pilot criteria be expanded to include, among other things, less liquid securities; securities with position limit tiers for listed options; and stocks that currently qualify for the Regulation M exception for actively-traded securities.[40]

A number of commenters stated that the proposed two-year time span for the pilot would be too long.[41] For example, Nasdaq asserted that the pilot should only last as long as absolutely necessary, to minimize the impact on issuers and the market, and suggested a six-month or twelve-month pilot. The NYSE expressed concern that a two-year pilot is "an exceptionally long time," especially if there were no quick mechanism to shorten or end the pilot if it proves to dislocate market prices. The STA favored a six-month pilot.

After careful consideration of the comments received, we are adopting a modified version of proposed Rule 202T. As adopted, Rule 202T provides procedures for the Commission to suspend any short sale price test for such securities and for such time periods as the Commission deems

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[34] We have adopted language that closely resembles the block positioner exception in Rule 200(d) since we believe that the economic rationale for and the operation of both exceptions are analogous. Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415 (June 9, 1992) at n. 60 (*citing* Securities Exchange Act Release No. 20230, 48 FR at 45119); Securities Exchange Act Release No. 20715 (March 6, 1984), 49 FR 9414 (March 13, 1984)).

[35] 17 CFR 240.10a–1(d).

[36] In this situation, the seller may be entitled to rely on an exception if the seller "owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense." 17 CFR 240.10a–1(e)(1). Additionally, the seller may be entitled to rely on an exception from Rule 203(b)(2)(ii), as adopted, if the seller owns the security sold pursuant to Rule 200, and the seller intends to deliver the security as soon as all restrictions on delivery have been removed, and no later than 35 days after trade date. *See* Rule 203(b)(2)(ii), discussed further in Part V.A.1.c., *infra*. However, without an exception to the price test, this sale should be marked "short."

[37] *See* Proposing Release, Section V.

[38] *See* letters from James Angel; Archipelago Holdings ("ARCA"); Yuseff J. Burgess; Chicago Board Options Exchange ("CBOE"); Dario Cosic; Davis Polk; Timothy K. Dolnier; Tolga Erman; Chris Freddo; Kristopher Goldhair; Chris Gregg; Marc Griffin; Charles W. Hansford; Zachary Hepner; ICI; Mike Ianni; Brian Ingram; Kevin Karlberg; Gregory Kleiman; LEK Securities; Michael Lucarello; Hal Lux and Leon M. Metzger; Managed Funds Association ("MFA"); Raymond J. Murphy; Nasdaq Stock Market ("Nasdaq"); Osmar92@optonline.net; Tal Plotkin; David Schwarz; Sinan Selcuk; Theodore J. Siegel; Todd Sherman; SIA; Dan Solomon; The Securities Traders Association ("STA"); Securities Traders Association of New York ("STANY"); Jimmie E. Williams; Willkie Farr.

[39] *See, e.g.*, letters from Anthony Gentile; Robert Morrow; NYSE; The Specialists Association. The NYSE asserted that a pilot will create a confusing system that will "slow trading, lead to errors and baffle market participants" as well as create "artificially anomalous price situations, particularly for securities within the same industry where some are subject to a 'tick' or 'bid' test and others are not."

[40] Some commenters suggested expanding the scope of stocks that may be included in a pilot. *See* letters from CBOE; Coreina Chan; Timothy K. Dolnier; Charles W. Hansford; Zachary Hepner; Gregory Kleiman; Michael Lucarello; Nasdaq; Osmar92@optonline.net; Tal Plotkin; David Schwarz; Dan Solomon; STA; STANY; Hiro Shinohara; Daniel C. Sweeney. Additionally, some advocated including less liquid Nasdaq NMS and listed securities, while others argued for including groups of stocks with the two highest position limit tiers for listed options. *See* letters from STA; STANY; CBOE. SIA's letter suggested using stocks that currently qualify for the Regulation M exception for actively-traded securities because they are less susceptible to market manipulation and because programming costs may be less as many broker-dealers already have systems in place to identify such stocks.

[41] *See* letters from James Angel; Charles Schwab Capital Markets ("Charles Schwab"); Nasdaq; NYSE; STA; STANY.

necessary or appropriate, in the public interest and consistent with the protection of investors after giving due consideration to the securities' liquidity, volatility, market depth and trading market. Any such pilot would commence by separate order of the Commission, which would allow the Commission to act quickly should adverse findings result from any pilot. As part of that process, we would consider the concerns expressed by some commenters that any pilot last only as long as absolutely necessary to allow the Commission to gather sufficient data. The order establishing any such pilot would identify the pilot stocks and set forth the methodology we would use in selecting pilot and control group stocks. Any such order would also indicate the factors we plan to analyze in the pilot, such as the impact on market quality, price changes caused by short selling, costs imposed by the tick test, and the use of alternative means to establish short positions.

By separate order, the Commission is establishing a pilot that includes a subset of securities from a broad-based index. The order identifies the pilot stocks and sets forth the methodology we used in selecting pilot and control group stocks.[42] We believe that a pilot established under Rule 202T using a subset of securities from a broad-based index will provide a balanced and targeted approach to assessing the efficacy of a price test for short sales. There is the potential that prices and trading activity may vary between securities included in a pilot and similar securities subject to the price test.[43] However, to the extent there are price and trading activity variations, this is precisely the empirical data that the Commission seeks to obtain and analyze as part of our assessment as to whether the price test should be removed or modified, in part or whole, for actively-traded securities or other securities. [44]

We appreciate the concerns expressed by some commenters that issuers subject to a pilot could be unfairly disadvantaged because of potentially abusive or manipulative behavior. We note, however, that most of the more liquid securities that will be appropriate for a pilot are traded on exchanges or other organized markets with high levels of transparency and surveillance. This would enhance the ability of the Commission and SROs to monitor trading behavior during the operation of any pilot and to surveil for manipulative short selling. Moreover, the general anti-fraud and anti-manipulation provisions of the federal securities laws will continue to apply to trading activity in these securities, thus prohibiting trading activity designed to improperly influence the price of a security.[45] In addition, a pilot would suspend only the operation of the price test, while the other requirements of Regulation SHO, including the order-marking, locate and delivery requirements, would remain in effect.[46]

Further, as adopted, Rule 202T makes explicit that no SRO "shall have a rule that is not in conformity with or conflicts with" the suspension of a price test for the securities selected for the pilot. Although a few commenters asserted that SRO price tests should remain in effect even if the Commission determined to eliminate price restrictions on short sales,[47] as we noted in the Proposing Release, we believe it would be inconsistent with, and detrimental to the goals of, Rule 202T and any pilot to allow SRO price tests to continue to apply to securities subject to the pilot. A pilot would be intended to allow the Commission to, among other things, study the effects of relatively unrestricted short selling on trading behavior for a select group of stocks. If pilot stocks remained subject to SRO price tests, the empirical data would be compromised and the value of the study undermined. As a result, Rule 202T, as adopted, prohibits the SROs from applying a price test for short sales in securities selected for a pilot during the operation of any pilot.

B. After-Hours Trading

We included in the Proposing Release our interpretation that the tick test applies to all trades in listed securities, whenever they occur, including in the after-hours market and after the consolidated transaction reporting system ceases to operate.[48] A significant number of commenters objected to this position, arguing that there is limited liquidity after regular trading hours, and that the trades do not generate price effects associated with the abusive practices that the short sale rule is designed to prevent.[49] These commenters further argued that many short sales that are executed after-hours are facilitating trades that are provisionally agreed to during regular trading hours, and accordingly provide liquidity to investors.[50]

Moreover, some commenters asserted that many after-hours trades are currently executed overseas due to the operation of Rule 10a–1.[51] Excepting short sales executed after-hours on a pilot basis may result in these trades being executed in the United States, thus allowing for increased surveillance of these trades and providing increased liquidity to potential U.S. buyers.

In response to the comments received, Rule 202T, as adopted, establishes a procedure by which we may suspend on a pilot basis the tick test of Rule 10a–1(a) and any SRO short sale price test during such time periods as the Commission finds necessary or appropriate and consistent with the protection of investors. Any such pilot would commence by order of the Commission.[52] The order described above establishes a pilot removing any price test for short sales of certain securities effected during certain after-hours periods.

V. Rule 203—Locate and Delivery Requirements for Short Sales

A. "Locate" Requirement

We are adopting proposed Rule 203, with some modifications, after considering the comments received.[53]

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[42] The Commission may in the future issue other orders adopting other pilot programs.

[43] *See, e.g.*, letter from SONECON, LLC.

[44] No individual issuers submitted comment letters opposing a pilot or expressing concern about the possible disparate trading of securities subject to a pilot or about the possible adverse impact on their securities should the price test be removed from short selling in their stock on a temporary basis. However, the NYSE submitted a letter expressing concern "on behalf of its members and its listed companies" that strongly supported continuing price restrictions and expressed concern about unscrupulous market participants forcing prices lower in stocks not subject to a price test.

[45] *See, e.g.*, Securities Act of 1933 ("Securities Act") Section 17(a), and Exchange Act Sections 9(a), 10(b), and 15(c) and Rules 10b–5 and 15c1–2 thereunder.

[46] Also, the order permits the Commission to act quickly to modify the pilot to address any adverse results, should we determine that continued operation of an established pilot would not be necessary or appropriate in the public interest or inconsistent with the protection of investors.

[47] The NYSE asserted that it should be allowed to maintain a tick test for short sales on the NYSE even if the Commission determines to eliminate price restrictions on short sales. The Specialist Association also argued for maintaining the current tick test on exchange-listed securities.

[48] Proposing Release, Section XIV.A. After the consolidated tape ceases to operate, the tick test rule prevents any person from effecting a short sale at a price that is lower than the last sale reported to the tape.

[49] *See, e.g.*, letters from James Angel; Charles Schwab; Davis Polk; Goldman; Citigroup; Merrill Lynch; Morgan Stanley; LEK Securities; MFA; SIA; Susquehanna International Group, LLP; Willkie Farr.

[50] *See, e.g.*, letters from Goldman, Citigroup, Merrill Lynch, Morgan Stanley.

[51] *See, e.g.*, letter from SIA.

[52] The order that is being issued concurrently with this release includes a pilot for short sales occurring after hours. *See*, n. 8, *supra*.

[53] Most commenters welcomed the Commission's proposal as a means to address potential manipulation through so called "naked" short selling, and additionally welcomed replacing the

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As adopted, Rule 203(b) creates a uniform Commission rule requiring a broker-dealer, prior to effecting a short sale in any equity security, to "locate" securities available for borrowing. For covered securities, Rule 203 supplants current overlapping SRO rules. Specifically, the rule prohibits a broker-dealer from accepting a short sale order in any equity security from another person, or effecting a short sale order for the broker-dealer's own account unless the broker-dealer has (1) borrowed the security, or entered into an arrangement to borrow the security, or (2) has reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due.[54] The locate must be made and documented prior to effecting a short sale, regardless of whether the seller's short position may be closed out by purchasing securities the same day.[55] The rule provides for some limited exceptions, including for short sales effected in connection with bona-fide market making, as discussed in further detail below.

As proposed, Rule 203(b) would have allowed the "person for whose account the short sale is executed" to perform a locate.[56] We agree with commenters that the locate requirement should apply to a regulated entity—the broker-dealer effecting the sale—and have modified the adopted rule accordingly.[57] Therefore, the rule as adopted makes clear that the broker-dealer effecting the short sale has the responsibility to perform the locate.[58]

We requested comment in the Proposing Release on the manner in which persons could satisfy the "reasonable grounds" determination in the proposed rule. In particular, we asked whether blanket assurances that stock is available for borrowing, *i.e.*, "Easy to Borrow" or "Hard to Borrow" lists, provide an accurate assessment of the current lending market in a manner that would not impede liquidity and the ability of market participants to establish short positions, while at the same time guarding against potential problems inherent with large extended settlement failures.[59] After considering the comments received, we believe that, absent countervailing factors, "Easy to Borrow" lists may provide "reasonable grounds" for a broker-dealer to believe that the security sold short is available for borrowing without directly contacting the source of the borrowed securities.[60] In order for it to be reasonable that a broker-dealer rely on such lists, the information used to generate the "Easy to Borrow" list must be less than 24 hours old, and securities on the list must be readily available such that it would be unlikely that a failure to deliver would occur.[61] Therefore, absent adequately documented mitigating circumstances, repeated failures to deliver in securities included on an "Easy to Borrow" list would indicate that the broker-dealer's reliance on such a list did not satisfy the "reasonable grounds" standard of Rule 203.[62]

Broker-dealers create "Hard to Borrow" lists to identify securities that are in limited supply. Thus, locates for securities on "Hard to Borrow" lists are likely to be difficult. However, the fact that a particular lender placed certain securities on a "Hard to Borrow" list cannot be taken to mean that the lender represents that securities that are *not* on the "Hard to Borrow" list are easy to borrow. Commenters viewed "Hard to Borrow" lists with circumspection,[63] and we understand that such lists are not widely used by broker-dealers. Therefore, the fact that a security is not on a hard to borrow list cannot satisfy the "reasonable grounds" test of Rule 203(b)(1)(ii).

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current disparate SRO requirements with a uniform Commission rule. *See, e.g.*, letters from NYSE; Nasdaq; SIA.

[54] Any broker-dealer using the United States jurisdictional means to effect short sales in securities traded in the United States would be subject to Regulation SHO, regardless of whether the broker-dealer is registered with the Commission or relying on an exemption from registration. In addition, Commission staff members have engaged in discussions with staff of The Investment Dealers Association of Canada ("IDA"), who have confirmed that the IDA intends to issue an interpretation that failure of IDA members to comply with the requirements of Regulation SHO may be considered a breach of IDA rules. This would be consistent with an interpretation that the IDA recently issued regarding an amendment to NASD Rule 3370, noting that IDA members would be required to make an affirmative determination that the member will receive delivery of the security from its customer or that the member can borrow the security on behalf of the customer by settlement date. It was stated that failure of IDA members to make such an affirmative determination may be considered a breach of IDA rules. Investment Dealers Association of Canada Member Regulation Notice MR0282 (April 13, 2004). The NASD amendment had extended the affirmative determination requirements to short sale orders that NASD members receive from non-member broker-dealers. Securities Exchange Act Release No. 48788 (November 14, 2003), 68 FR 65978 (November 24, 2003); NASD Notice to Members 04–03 (January, 2004); NASD Notice to Members 04–21.

[55] This is consistent with the current practice under NASD Rule 3370. *See, e.g., Ko Securities, Inc.* and *Terrance Y. Yoshikawa*, Securities Exchange Act Release No. 48550 (September 26, 2003) (holding that an affirmative determination, *i.e.*, a "locate," must be made before the securities are sold short regardless of whether the short seller repurchases securities on the same day).

[56] Several commenters addressed this issue. *See, e.g.*, letters from NYSE; SIA.

[57] *See, e.g.*, letter from NYSE.

[58] A broker-dealer may obtain an assurance from a customer that such party can obtain securities from another identified source in time to settle the trade. This may provide the "reasonable grounds" required by Rule 203(b)(1)(ii). However, where a broker-dealer knows or has reason to know that a customer's prior assurances resulted in failures to deliver, assurances from such customer would not provide the "reasonable grounds" required by 203(b)(1)(ii). The documentation required by Rule 203(b)(1)(iii) should include the source of securities cited by the customer. The broker-dealer also should be able to demonstrate that there are "reasonable grounds" to rely on the customer's assurances, *e.g.*, through documentation showing that previous borrowings arranged by the customer resulted in timely deliveries in settlement of the customer's transactions.

[59] According to the current NASD "affirmative determination" rule, the manner by which a member or person associated with a member annotates compliance with the affirmative determination requirement is to be decided by each member. Members may rely on "blanket" or standing assurances (*i.e.*, "Easy to Borrow" lists) that securities will be available for borrowing on settlement date. For short sales executed in Nasdaq National Market ("NNM") or exchange-listed securities, members also may rely on "Hard to Borrow" lists identifying NNM or listed securities that are difficult to borrow or unavailable for borrowing on settlement date provided that: (i) Any securities restricted pursuant to NASD Rule 11830 must be included on such a list; and (ii) the creator of the list attests in writing (on the document or otherwise) that any NNM or listed securities not included on the list are easy to borrow or are available for borrowing. Members are permitted to use Easy to Borrow or Hard to Borrow lists provided that: (i) The information used to generate the list, is no more than 24 hours old; and (ii) the member delivers the security on settlement date. Should a member relying on an Easy to Borrow or Hard to Borrow list fail to deliver the security on settlement date, the NASD deems such conduct inconsistent with the terms of Rule 3370, absent mitigating circumstances adequately documented by the member. See NASD Rule 3370(b)(4)(C).

[60] In its comment letter, the SIA noted that in developing "Easy to Borrow" lists, broker-dealer stock loan desks use information from a number of sources, including institutional lenders that have sophisticated systems for estimating borrow supply. Broker-dealer stock loan desks also consider the availability of inventory at their own firms and potential availability from other broker-dealers that act as conduit lenders. Much of this information is available through electronic feeds and is updated frequently. *See* letter from SIA.

[61] A broker-dealer could look to a lender's statement to the broker-dealer regarding the amount of securities available to lend on an "Easy to Borrow" list.

[62] Of course, securities that are "threshold securities" pursuant to Rule 203(c) should generally not be included on "Easy to Borrow" lists.

[63] *See, e.g.*, letter from NYSE. In particular, the NYSE stated that, "We believe that the use of 'easy to borrow' lists, together with an industry-wide list of securities where there is evidence of significant settlement failures (*i.e.*, those for which there are fails to deliver at a clearing agency of 10,000 shares or more and that is equal to at least one-half of one percent of the issue's total shares outstanding) prepared daily by the National Securities Clearing Corporation ('NSCC') as proposed, would be a more appropriate means of determining whether a security sold short could be borrowed. Consequently, the Exchange believes that broker-dealers should be required to make an affirmative determination for those securities that are not on the 'easy to borrow' list."

1. Exceptions From the Locate Requirement

a. Broker-Dealer Accepting Short Sale Order From Another Broker-Dealer—Rule 203(b)(2)(i)

Rule 203(b)(2)(i) provides a new exception from the uniform locate requirement of Rule 203(b)(1) for a registered broker or dealer that receives a short sale order from another registered broker or dealer that is required to comply with 203(b)(1). For example, where an introducing broker-dealer submits a short sale order for execution, either on a principal or agency basis, to another broker-dealer,[64] the introducing broker-dealer has the responsibility of complying with the locate requirement. The broker-dealer that received the order from the introducing broker-dealer would not be required to perform the locate. However, a broker or dealer would be required to perform a locate where it contractually undertook to do so or the short sale order came from a person that is not a registered broker-dealer.[65]

b. Bona-Fide Market Making

We are adopting the proposed exception from the uniform "locate" requirement, as Rule 203(b)(2)(iii), for short sales executed by market makers, as defined in Section 3(a)(38) of the Exchange Act,[66] including specialists and options market makers, but only in connection with bona-fide market making activities.[67] Bona-fide market making does not include activity that is related to speculative selling strategies or investment purposes of the broker-dealer and is disproportionate to the usual market making patterns or practices of the broker-dealer in that security. In addition, where a market maker posts continually at or near the best offer, but does not also post at or near the best bid, the market maker's activities would not generally qualify as bona-fide market making for purposes of the exception.[68] Further, bona-fide market making does not include transactions whereby a market maker enters into an arrangement with another broker-dealer or customer in an attempt to use the market maker's exception for the purpose of avoiding compliance with Rule 203(b)(1) by the other broker-dealer or customer.[69]

c. Additional Exception From the Locate Requirement—Rule 203(b)(2)(ii)

Pursuant to the suggestions of other commenters, we are including an additional exception from the uniform locate requirement of Rule 203(b)(1) for situations where a broker-dealer effects a sale on behalf of a customer that is deemed to own the security pursuant to Rule 200, although, through no fault of the customer or the broker-dealer, it is not reasonably expected that the security will be in the physical possession or control of the broker-dealer by settlement date, and is thus a "short" sale under the marking requirements of Rule 200(g) as adopted.[70] Such circumstances could include the situation where a convertible security, option, or warrant has been tendered for conversion or exchange, but the underlying security is not reasonably expected to be received by settlement date.[71] Rule 203(b)(2)(ii) as adopted provides that in all situations, delivery should be made on the sale as soon as all restrictions on delivery have been removed, and in any event no later than 35 days after trade date, at which time the broker-dealer that sold on behalf of the person must either borrow securities or close out the open position by purchasing securities of like kind and quantity.[72]

Two commenters advocated maintaining the current exception from the "affirmative determination" requirements of NASD Rule 3370 for short sales that result in fully hedged or arbitraged positions.[73] One comment letter requested an exception from the proposed locate and delivery requirements of Rule 203 in a situation where a market participant has a long position in warrants or rights which are exercisable within 90 days and are subject to a fixed price per share conversion ratio.[74] The other comment letter requested an exception from the proposed locate and delivery requirements in the situation where a market participant is long in-the-money call options.[75] The commenter argued

[64] This could include an electronic communications network (ECN).

[65] Of course, an executing broker-dealer who executes a short sale pursuant to an order from an introducing broker as part of a scheme to manipulate the security, or where, for example, it knows that the introducing broker did not perform the locate, could be liable under the securities laws, for, among other violations, committing or aiding and abetting a violation of Rule 203(b)(1). *See, e.g.*, Sections 15(b)(4)(e) and 20(e) of the Exchange Act. 15 U.S.C. 78t.

[66] Section 3(a)(38) states: "The term 'market maker' means any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer quotation system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis." 15 U.S.C. 78c(a)(38).

[67] As noted in the Proposing Release, we believe that a narrow exception for market makers engaged in bona-fide market making activities is necessary because they may need to facilitate customer orders in a fast moving market without possible delays associated with complying with the "locate" requirement.

[68] Moreover, a market maker that continually executed short sales away from its posted quotes would generally be unable to rely on the bona-fide market making exception.

[69] *See also* NASD IM–3350(c)(2) ("A market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades."). Although the IM–3350 interpretation applies expressly to the bid test in NASD Rule 3350, the NASD previously found that the standards set forth are equally applicable to the market maker exemption in NASD Rule 3370. *See* NASD Hearing Panel Decision as to Respondents John Fiero and Fiero Brothers, Inc. (December 6, 2000); *See also* Section 20(b) of the Exchange Act, 15 U.S.C. 78t.

[70] Pursuant to Rule 200(g), a broker or dealer shall mark an order to sell a security "long" only if the seller is deemed to own the security being sold pursuant to 17 CFR 242.200 and either: (i) The security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. *See, supra* Part III.B. for a further discussion of the order marking requirements.

[71] Another situation could be where a customer owns stock that was formerly restricted, but pursuant to Rule 144 under the Securities Act of 1933, the securities may be sold without restriction. In connection with a sale of such security, the security may not be capable of being delivered on settlement date, due to processing to remove the restricted legend. *See, e.g.*, letter from Feldman Weinstein, LLP ("Feldman").

[72] We believe that 35 days is a reasonable outer limit to allow for restrictions on a security to be removed if ownership is certain. We note that Section 220.8(b)(2) of Regulation T of the Federal Reserve Board allows 35 days to pay for securities delivered against payment if the delivery delay is due to the mechanics of the transaction. 12 CFR 220.8(b)(2).

[73] *See* NASD Rule 3370(b)(2)(B), which states in pertinent part that, "[n]o member shall effect a 'short' sale for its own account in any security unless the member or person associated with a member makes an affirmative determination that the member can borrow the securities or otherwise provide for delivery of the securities by settlement date. This requirement will not apply to * * * transactions that result in fully hedged or arbitraged positions." Rule 3370(b) provides guidelines in determining the availability of the exception.

[74] *See* first and fourth letters from Saul Ewing, LLP., on behalf of Greenwood Partners. The commenter noted the situation where a market participant views the issuer's warrants as being overly rich in comparison to the pricing of the warrants, and will thus sell the underlying stock short and purchase the warrants. It also stated that, because the stock borrow programs for many smaller issuers are virtually non-existent, the market participant engaging in this activity may be required to sell short naked. In order to guard against potential "death spiral" activity, it was requested that the exception be limited to warrants with a fixed price per share conversion ratio.

[75] *See* third letter from Saul Ewing, LLP. Specifically, the commenter, writing on behalf of an unnamed private equity fund, argued that the fund

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that excepting short sales in such situations promotes the ability of smaller issuers to acquire financing.

We have decided not to incorporate an exception from the locate and delivery requirements of Rule 203 for short sales that result in bona-fide fully hedged or arbitraged positions. Because "bona-fide" hedging and arbitrage can be difficult to ascertain, we are concerned about including a blanket exception for some activity that may have the potential to harm issuers and shareholders.[76] During the period of the pilot, we prefer instead to address the situations noted by the commenters, and other similarly situated entities, through the exemptive process, to the extent warranted.[77] This will allow us to consider the particular facts and circumstances relevant to each request, as well as any potentially negative ramifications, and, should we gain comfort with the described transaction(s), fashion appropriate relief.

Additionally, we have declined at this time to include an express exception from the locate requirements of Rule 203(b)(1) for transactions in exchange traded funds ("ETFs").[78] We have observed high levels of fails in some ETFs. Rather than providing a blanket exception from the requirements of Rule 203, we would prefer instead to address the treatment of ETFs through the exemptive process, which would be consistent with the prior treatment of ETFs.[79] In considering any exemptive request, the Commission would evaluate the causes of large fails in certain ETFs, as well as potential remedies to resolve such fails, if necessary.

B. Short Sales in Threshold Securities—Rule 203(b)(3)

1. Threshold Securities

The Commission has decided to adopt, with certain modifications from what was proposed, additional requirements targeted at stocks that have a substantial amount of failures to deliver. As adopted, Rule 203(b)(3) requires any participant of a registered clearing agency ("participant")[80] to take action on all failures to deliver that exist in such securities ten days after the normal settlement date, *i.e.*, 13 consecutive settlement days.[81] Specifically, the participant is required to close out the fail to deliver position by purchasing securities of like kind and quantity.

With slight modification from the proposal, a "threshold security" is defined in Rule 203(c)(6) as any equity security of an issuer that is registered under Section 12, or that is required to file reports pursuant to Section 15(d) of the Exchange Act[82] where, for five consecutive settlement days: there are aggregate fails to deliver at a registered clearing agency of 10,000 shares or more per security; that the level of fails is equal to at least one-half of one percent of the issuer's total shares outstanding; and the security is included on a list published by an SRO.[83] We believe this threshold characterizes situations where the ratio of unfulfilled delivery obligations at the clearing agency at which trades are settled represents a significant number of shares relative to the company's total shares outstanding. We believe that such circumstances warrant action designed to address potential negative effects.[84] This narrowly targeted threshold will not burden the vast majority of securities where there are not similar concerns regarding settlement.[85] Our OEA analyzed recent data from NSCC on fails to deliver and calculated that approximately 3.9% of all exchange-listed and Nasdaq securities, and 4.0%

provides financing to smaller issuers, with a typical transaction generally involving a private placement of restricted stock in a company at a fixed price in exchange for an agreement to provide cash for such shares upon the closing of the transaction. In order to hedge the risk of market price changes in the restricted shares, the fund would buy over-the-counter put options from a counterparty. It was argued, however, that the counterparty would want to hedge its risk by purchasing an in-the-money call option, and shorting the underlying stock. It was similarly argued that due to the dearth of borrowable shares in some smaller issuers, the sales could be naked short sales.

[76] In a recent matter, the Commission accepted offers of settlement from Rhino Advisors and Thomas Badian, Rhino's president, in connection with trading in the common stock of Sedona Corporation by Rhino on behalf of certain foreign entities. The Commission alleged that Rhino and Badian, acting in their capacities as investment advisors, manipulated Sedona's stock price downward by engaging in naked short selling of Sedona's stock in accounts maintained in the names of others. In the complaint filed in the action, the Commission alleged that Rhino manipulated Sedona's stock price to enhance an offshore entity's economic interests in a $3 million convertible debenture issued by Sedona and that, by depressing Sedona's stock price, Rhino increased the number of shares that the offshore entity received when it exercised its conversion rights under the debenture. *See Rhino Advisors, Inc. and Thomas Badian*, Litigation Release No. 18003 (February 27, 2003); *see also SEC* v. *Rhino Advisors, Inc. and Thomas Badian*, Civ. Action No. 03 Civ 1310 (SDNY March 5, 2003).

[77] *See* Section 203(d) of Regulation SHO, 17 CFR 242.203(d), and Section 36 of the Exchange Act. 15 U.S.C. 78mm.

[78] Two commenters requested an exception to the locate and delivery requirements for ETFs. The commenters maintain that ETFs should not be subject to the requirements of Rule 203 because ETFs have the ability to continuously create and redeem shares. *See* letters from Amex; Nasdaq.

[79] Prior exemptions from Rule 10a–1 have been granted for transactions in certain ETFs. *See, e.g.*, Letter re: SPDRs (January 27, 1993); Letter re: MidCap SPDRs (April 21, 1995); Letter re: Select Sector SPDRs (December 14, 1998); Letter re: Units of the Nasdaq-100 Trust (March 3, 1999); Letter re: ETFs (August 17, 2001) (class letter).

[80] "Participant" is defined in Section 3(a)(24) of the Exchange Act. 15 U.S.C. 78c(a)(24). A "registered clearing agency" is a clearing agency, as defined in Section 3(a)(23)(A) of the Exchange Act, (15 U.S.C. 78c(a)(23)(A)), that is registered with the Commission pursuant to Section 17A of the Exchange Act, 15 U.S.C. 78q–1.

[81] Rule 203(c)(5) defines "settlement day" to mean any business day on which deliveries of securities and payments of money may be made through the facilities of a registered clearing agency.

[82] As proposed, the restrictions of Rule 203 would have covered equity securities registered under Section 12 of the Exchange Act. We are also extending the delivery restrictions to equity securities of issuers subject to Exchange Act reporting pursuant to Section 15(d). This would thus mandate coverage of those companies that are required to provide ongoing public disclosure about the company, its actions, and its performance. As the calculation of the threshold that would trigger the delivery requirements of Rule 203 depends on identifying the aggregate fails to deliver as a percentage of the issuer's total shares outstanding, it is necessary to limit the requirement to companies that are subject to the reporting requirements of the Exchange Act.

[83] For example, if an issuer had 1,000,000 shares outstanding, one-half of one percent (.005) would be 5,000 shares. An aggregate fail to deliver position at a clearing agency of 10,000 shares or more would thus exceed the specified level of fails. If an issuer had 10,000,000 shares outstanding, one-half of one percent would be 50,000 shares. An aggregate fail to deliver position at a clearing agency of 50,000 shares or greater would exceed the specified level of fails.

[84] We are incorporating the same threshold that is currently used in NASD Rule 11830. Because of this, it is our belief that implementation will not impose excessive programming costs on the industry, although we note that some programming modifications will be necessary to extend the current calculation beyond the current universe of Nasdaq securities.

[85] As noted by some commenters, there may be many different causes of fails to deliver that could be unrelated to a market participant engaging in naked short selling. Thus, imposing a lower threshold or, as suggested by some commenters, prohibiting all fails, might be impracticable or an overly-broad method of addressing any potential abuses, and could also disrupt the efficient functioning of the Continuous Net Settlement system ("CNS") operated by the National Securities Clearing Corporation ("NSCC"). For example, one commenter noted that some fails are caused by custodian banks failing to deliver on behalf of their customers for a number of reasons, such as where a foreign domiciled customer engages in arbitrage involving American Depositary Receipts ("ADRs") and operates under the international arbitrage exemption provided in Rule 10a–1(e)(8). *See* letter from LEK Securities.

Additionally, some commenters addressed NSCC's securities lending program. *See, e.g.*, letter from NASAA at 3. In responding to comments on the stock borrow program, NSCC noted that the program can reduce fails and give purchasers an increased chance of receiving those securities on settlement date. *See* letter from NSCC at 6–7. The Commission notes that NSCC's stock borrow program, as approved by the Commission, permits NSCC to borrow securities for the purpose of completing settlements only if participants have made those securities available to NSCC for this purpose and those securities are on deposit in the participant's account at The Depository Trust Company ("DTC"). *See* Securities Exchange Act Release No. 17422 (December 29, 1980), 46 FR 3104 (January 13, 1981).

of all securities, would meet this threshold.[86]

In order to be deemed a threshold security, and thus subject to the restrictions of Rule 203(b)(3), a security must exceed the specified fail level for a period of five consecutive settlement days. Similarly, in order to be removed from the list of threshold securities, a security must not exceed the specified level of fails for a period of five consecutive settlement days.[87] This five-day requirement will address the potential situation where a security exceeds the fails level on one day, based on an aberrant fail to deliver that may not be indicative of the usual pattern of that particular security, and thus would prevent potential "flickering" of securities in and out of the list of threshold securities.[88] Rule 203(b)(3) is intended to address potential abuses that may occur with large, extended fails to deliver.[89] We believe that the five-day requirement will facilitate the identification of securities with extended fails.

As is currently the practice for Nasdaq securities that exceed the threshold designated in NASD Rule 11830, the pertinent SRO will be responsible for publishing a daily list of the threshold securities that are listed on their markets, or for which the SRO bears the primary surveillance responsibility.[90] The SROs derive the information necessary to calculate the list of threshold securities from data on fails to deliver currently received from NSCC.[91]

2. Close-out Requirement

As proposed, the rule would have specified that, for short sales of any security meeting this threshold, the selling broker-dealer must deliver the security no later than two days after the settlement date. If for any reason such security were not delivered within two days after the settlement date, the rule would have restricted the broker-dealer, including market makers, from executing additional short sales for the next 90 days in such security for the person for whose account the failure to deliver occurred, unless the broker-dealer or the person for whose account the short sale is executed, borrowed the security or entered into a bona-fide arrangement to borrow the security, prior to executing the short sale. In addition, the rule would have required the registered clearing agency that processed the transaction to refer the party failing to deliver to the NASD and the designated examining authority for such broker-dealer for appropriate action; and to withhold a benefit of any mark-to-market amounts or payments that otherwise would be made to the party failing to deliver.

Some commenters argued that under the confines of current settlement practices and procedures, it is not practical to assign delivery failures to a particular clearing firm customer account. It was noted that because NSCC's continuous net settlement ("CNS") system nets all buys and sells in each security for each NSCC participant, broker-dealers cannot determine which customer's transaction or account gave rise to a failure to deliver.[92] We note that while this may be the current situation in the industry, if the Commission believes that the rules as adopted are not having the intended effects of reducing potentially manipulative behavior, we may consider additional rulemaking that could require broker-dealers to identify individual accounts that are causing fails to deliver.

We have considered the comments received, and have adopted a rule that differs in the mechanics from the proposed rule, but continues to preserve the goal of limiting failures to deliver in threshold securities. As adopted, Rule 203(b)(3) requires action if a fail in a threshold security remains open ten days after the settlement date, *i.e.*, for thirteen consecutive settlement days.[93] Specifically, Rule 203(b)(3) requires a participant of a clearing agency registered with the Commission[94] to take action to close out the fail to deliver that has remained for thirteen consecutive settlement days by purchasing securities of like kind and quantity.[95] In addition, Rule

[86] Some stocks that are quoted in the Pink Sheets are not reporting issuers, and thus there is not a readily available means to determine the total shares outstanding in such securities. If, however, we incorporate non-reporting issuers that have aggregate fails in excess of 10,000 shares, only an additional 1% of all securities would be added. These securities will not be subject to the additional requirements imposed upon threshold securities, although broker-dealers effecting short sales in these securities are subject to the locate requirements of Rule 203(b)(1).

[87] For example, an issuer that had 10,000,000 shares outstanding and an aggregate fail to deliver position greater than 50,000 shares for at least five consecutive settlement days, would be a threshold security, and would no longer be a threshold security after the aggregate fail to deliver position was less than 50,000 shares for at least five consecutive settlement days.

[88] For example, we note the situation involving ADR arbitrage as described in n. 85, *supra*.

[89] A person that sells a security and fails to deliver, with the intent of triggering the close-out requirement of Rule 203(b)(3) and creating a short squeeze that could benefit a person's long position, could be deemed to be engaging in manipulative behavior.

[90] It is expected that the NYSE will calculate and disseminate a list of NYSE-listed securities that exceed the specified fails level for at least five consecutive settlement days. Amex will calculate and disseminate a list of Amex-listed securities that exceed the specified fails level for at least five consecutive settlement days, in addition, the NASD will calculate and disseminate a list of all over-the-counter securities, including Nasdaq, OTCBB, and Pink Sheet securities that exceed the specified fails level for at least five consecutive settlement days. It is expected that the lists of threshold securities will be disseminated prior to the commencement of each trading day.

[91] As NSCC noted in its comment letter, it is providing the Commission, the NYSE, the NASD, and Amex with a daily report listing information on all participant short obligations for all equity securities with aggregate clearing short positions greater than 10,000 shares. The SROs will calculate whether the aggregate fails at NSCC exceed 0.5% of the issuer's total shares outstanding.

[92] *See, e.g.*, letter from SIA. The SIA, as well as several other commenters, stated the belief that buy-ins were more practical since it is possible to allocate the costs of a buy-in among multiple short sellers, whereas application of the proposed account trading restriction is not feasible. Other commenters stated that the fear of a mandatory buy-in and threat of a market loss would be a greater deterrent than the proposed restriction and withholding of the mark. *See, e.g.*, letter from H. Glenn Bagwell, Jr.

[93] We note that some commenters believed that imposing the delivery requirements two days after settlement, *i.e.*, after five settlement days, would capture many instances of ordinary course settlement delays, rather than address potentially abusive activity. *See, e.g.*, letters from CBOE; SIA; Willkie Farr. OEA took a snapshot of fails data received from NSCC from April 19 through April 30, 2004, which confirmed a rate of decline over a course of settlement days. Similar rates of decline were found using data obtained from NSCC for other periods during the past six months. In addition, because Rule 203(b)(3) would require a participant to close out all fails to deliver in threshold securities, whether resulting from short sales or long sales, extending the time period to ten days after settlement would make the close-out requirement consistent with 17 CFR 240.15c–3–3(m). Ten days after settlement is also the timeframe currently identified in NASD Rule 11830.

[94] A participant of a registered clearing agency includes registered broker-dealers, and entities that may not be registered broker-dealers, but are responsible for the settlement of transactions at a registered clearing agency, such as the Canadian Depository for Securities ("CDS").

[95] The following examples illustrate potential scenarios involving threshold security XYZ: (i) If a participant has a 100 share fail to deliver position in XYZ for 13 consecutive settlement days, the participant is required to purchase 100 shares; (ii) If a participant has a 100 share fail to deliver position in XYZ, and the fail to deliver position increases by 100 shares each day for 13 consecutive settlement days, yielding a 1300 share fail to deliver position, then the participant is required to purchase 100 shares at the end of the 13th day, 100 shares the next day, etc., until the entire fail to deliver position is closed out; (iii) If a participant has a 100 share fail to deliver position in XYZ, which is then reduced to a 50 share fail to deliver position during the following 13 consecutive settlement days, then the participant is required to close out 50 shares; or (iv) If a participant has a 100 share fail to deliver position in XYZ, which is netted to zero five settlement days later, and then a new 100 share position is established the following day, the participant would not be required to close out the initial 100 shares, but would be required to close out the subsequent 100 share fail to deliver position if it remained for 13 consecutive settlement days.

203(b)(3)(iii) states that the participant, and any broker-dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the bona-fide market making exception, is prohibited from effecting further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the fail to deliver position is closed out. To the extent that the participant can identify the broker-dealer(s) or account(s) that have contributed to the fail to deliver position, the requirement to borrow or arrange to borrow prior to effecting further short sales should apply to only those particular broker-dealer(s) or account(s). Rule 203(b)(3)(v) states that where a participant enters into an arrangement with a counterparty to purchase securities as required by Rule 203(b)(3), and the broker or dealer knows or has reason to know that the counterparty will not deliver the securities, the broker or dealer will not have fulfilled the requirements of the rule.[96]

The requirement to close out fail to deliver positions in threshold securities that remain for thirteen consecutive settlement days does not apply to any positions that were established prior to the security becoming a threshold security.[97] However, if a participant's fail to deliver position is subsequently reduced below the pre-existing position, then the fail to deliver position excepted by this subparagraph shall be the lesser amount.[98] Rule 203(b)(3)(iv) also provides that a participant may reasonably allocate its responsibility to close out open fail positions in threshold securities to another broker-dealer for which the participant is responsible for settlement. Thus, participants that are able to identify the accounts of broker-dealers for which they clear may allocate the responsibility to close out open fail to deliver positions to the particular account(s) whose trading activities have caused the fail to deliver position. Absent such identification, however, the participant would remain subject to the close out requirement.

3. Other Proposed Requirements

We are not adopting the additional requirements of proposed Rule 203(b)(3)(ii), which would have required a registered clearing agency that processed the transaction to refer the party failing to deliver to the NASD and the designated examining authority for such broker-dealer for appropriate action; and withhold a benefit of any mark-to-market amounts or payments that otherwise would be made to the party failing to deliver. Since the Proposing Release was issued, Commission staff and the SROs have developed new procedures to identify and inquire regarding failures to deliver that achieve the goals of the proposed notification requirement. This includes the daily dissemination by NSCC to the Commission and the SROs of a report listing information on all participant short obligations for all equity securities with aggregate clearing short positions greater than 10,000 shares, which is being used by the SROs to initiate inquiries with members concerning the cause of the fails and whether there was compliance with regulatory requirements.

In addition, NSCC and other commenters noted that, due to the manner in which the CNS system currently calculates each participant net position in a security, it is not possible to distinguish between obligations to deliver that are the result of short sales as opposed to long sales.[99] As such, it is not possible to determine whether a mark paid to a participant is a "benefit" received in connection with a fail to deliver position resulting from a short sale.

We are not adopting at this time the proposal that would require NSCC to withhold mark-to-market amounts paid to individuals. However, the Commission intends to pay close attention to the operation and efficacy of the provisions we are adopting in Rule 203, and will consider whether any further action is warranted.

4. Market Makers

We received a number of comments from market makers, including options market makers, on the proposal not to provide an exception for market makers from the special delivery requirements applicable to securities that meet the designated threshold.[100] Some of these commenters stated that the effect of not including such an exception would be to cease altogether options trading in securities that are difficult to borrow, as it was argued that no options market maker would make markets without the ability to hedge by selling short the underlying security.[101] In addition, another commenter stated that the heightened delivery requirements for threshold securities could drain liquidity in other securities where there is no current indication of significant settlement failures.[102] The commenter believed that, while a blanket exception from the heightened delivery requirements would be preferable, at a minimum the implementation of any such provision should not apply to market maker positions acquired prior to the effective date of the rule, and likewise should not apply to any short position acquired prior to the time that the subject security meets the designated threshold.

We note that the close out requirements of Rule 203(b)(3) will only apply to fail to deliver positions in threshold securities, and will not apply to any fail to deliver positions established prior to the security meeting the threshold.[103] As such, we believe that this addresses in part the commenters' concerns that market makers would need to assess the probability of a security meeting the threshold at some point in the future. Moreover, we expect that a small percentage of securities for which there are associated options will exceed the threshold.[104] In light of this, we believe that the effects of not including a market

[96] This includes the situation where a broker-dealer that was required to close out a fail to deliver in a security exceeding the threshold entered into an arrangement to buy from a counterparty, and thus net out the broker-dealer's position at CNS, but the broker-dealer knew or had reason to know that the counterparty did not intend to deliver the security, which thus created another fail in the CNS system.

[97] Rule 203(b)(3)(i). This is consistent with the current operation of NASD Rule 11830.

[98] For example, if a participant had a 100 share fail to deliver position in XYZ security prior to XYZ becoming a threshold security, and if XYZ subsequently became a threshold security, the participant would not be required to close out the 100 share fail, even if it remained for 13 consecutive settlement days. Therefore, if after becoming a threshold security the fail to deliver position in XYZ increased to 200 shares, and remained for 13 consecutive settlement days, the participant would be required to close out 100 shares. If, after becoming a threshold security, the participant's total fail to deliver position in XYZ fell to 50 shares, and then rose to 150 shares and remained for 13 consecutive settlement days, the participant would be required to close out 100 shares, rather than only 50 shares.

[99] *See* letter from NSCC at p. 5 for further discussion regarding the operation of the CNS system.

[100] *See, e.g.*, letters from Knight; Susquehanna; Pacific Exchange ("PCX"); Amex; and joint letter from Amex, CBOE, International Securities Exchange ("ISE"); The Options Clearing Corporation ("OCC"), PCX, Philadelphia Stock Exchange ("PHLX") ("Joint Options Letter").

[101] *See* Joint Options Letter.

[102] *See* letter from Susquehanna. In particular, this commenter believed that market makers would need to assess for each assigned security the probability that it would become a threshold security at some point in the future, and in circumstances in which this is thought to be a realistic possibility, the market maker would need to decide whether to incorporate the added risks into pricing or relinquish market maker status in the particular security.

[103] *See* Rule 203(b)(3)(i).

[104] OEA has estimated that approximately 4.1% of all securities that have options traded on them would meet the threshold.

maker exception from the heightened delivery requirement will not be as severe as some of the commenters have described. Moreover, while some of these commenters have opined that options market makers are not responsible for significant failures to deliver,[105] other commenters and academics have questioned this assertion.[106]

Therefore, while market makers (including options market makers) engaged in bona-fide market making will continue to be excepted from the locate requirement of Rule 203(b)(1), even when effecting short sales in threshold securities, we have decided at this time not to extend an exception to market makers from the requirements to close out fails to deliver in such securities that remain for thirteen consecutive settlement days. Moreover, as discussed previously, Rule 203(b)(3)(iii) provides that until the market maker, or the participant that clears for the market maker, takes action to close out any such fails to deliver that remain ten days after the normal settlement date, the market maker shall be unable to rely on the exception in Rule 203(b)(2)(iii) from the requirement to "borrow or arrange to borrow" for further short sales in such security.

We have, however, included a limited exception from the close out requirement to allow registered options market makers to sell short threshold securities in order to hedge options positions, or to adjust such hedges, if the options positions were created prior to the time that the underlying security became a threshold security. Any fails to deliver from short sales that are not effected to hedge pre-existing options positions, and that remain for thirteen consecutive settlement days, are subject to the mandatory close out requirement. We will, however, take into consideration information that shows that this provision operates significantly differently from our expectations.

VI. Rule 203(a)—Long Sales

We are adopting subparagraph (a) of Rule 203, which covers delivery requirements applicable to long sales of securities, largely as proposed. Rule 203(a) incorporates current Rule 10a–2.

As proposed, Rule 203(a) would have provided that if a broker-dealer knows or should know that a sale was marked long, the broker-dealer must make delivery when due and cannot use borrowed securities to do so. The proposed rule would have provided that the delivery requirements would not apply in three situations: to the loan of a security through the medium of a loan to another broker or dealer; where the broker or dealer knows or has been reasonably informed by the seller that the seller owns the security and will deliver it to the broker or dealer prior to the scheduled settlement of the transaction; or where an exchange or securities association finds, prior to the loan or fail, that the sale resulted from a good-faith mistake, the broker-dealer exercised due diligence, and either that requiring a buy-in would result in undue hardship or that the sale had been effected at a permissible price. The proposed requirements would have extended to all securities, not just to those registered on an exchange.

Three commenters supported the proposed changes, believing that they would ensure greater consistency across markets and securities.[107] One commenter requested that the rule except long sales that fail, through no fault of the seller, because of processing delays.[108] In addition, two commenters suggested that the proposed Rule did not adequately address long sale delivery fails.[109]

After considering comments received, we are adopting the changes proposed, with one modification. Pursuant to proposed Rule 203(a), one of the circumstances in which a fail or delivery of borrowed shares would have been permitted was where, prior to the sale, the broker or dealer knew that the seller owned the securities and the seller had represented that he or she would deliver them to the broker in time for settlement. Although we believe it was implicit in the proposed rule text (and in current Rule 10a–2), we are including in the rule text the predicate that the seller fails to make such delivery after advising the broker-dealer that he or she would deliver the securities in time for settlement.[110]

As adopted, Rule 203(a) requires that if a broker-dealer knows or should know that a sale of an equity security is marked long, the broker-dealer must make delivery when due and cannot use borrowed securities to do so. This delivery obligation does not apply in three circumstances: (1) The loan of a security through the medium of a loan to another broker or dealer; (2) where the broker or dealer knows or has been reasonably informed by the seller that the seller owns the security and will deliver it to the broker or dealer prior to the scheduled settlement of the transaction and the seller fails to make such delivery;[111] or (3) where an exchange or securities association finds, prior to the loan or arrangement to loan any security for delivery, or failure to deliver, that the sale resulted from a good-faith mistake, the broker-dealer exercised due diligence, and either that requiring a buy-in would result in undue hardship or that the sale had been effected at a permissible price.[112]

The new rule is consistent with the Commission's view that delivery requirements are important for all securities, particularly those with a lower market capitalization that may be more susceptible to abuse. Moreover, Rule 203(a) provides that on a long sale, a broker-dealer cannot fail or loan shares unless, in advance of the sale, it ascertained that the customer owned the shares, and had been reasonably informed that the seller would deliver the security prior to settlement of the transaction. This requirement is consistent with changes being made to the order marking requirements, which require that for an order to be marked

[105] *See* Joint Options Letter.

[106] *See* letter from SIA (which noted in pertinent part, "[t]he SEC and SROs may also want to consider whether to utilize their existing authority to determine to what extent non-bona-fide market making trading activities by market makers does or does not contribute to extended fails."); *see also* Evans, Geczy, Musto & Reed, *Failure Is an Option: Impediments to Short Selling and Options Prices*, Working Paper, The Wharton School at the University of Pennsylvania and the University of North Carolina (March 1, 2003) (finding that the options market maker exemption from the requirement to locate stock to borrow on short sales may create significant profits for the market makers).

[107] *See* letters from H. Glenn Bagwell, Jr.; Feldman; LEK Securities.

[108] *See* letter from Feldman. We have addressed this situation by providing an exception in Rule 203(b)(2)(ii) for situations where a broker effects a sale on behalf of a customer that is deemed to own the security pursuant to Rule 200, although, through no fault of the customer or the broker-dealer, it is not reasonably expected that the security will be in the physical possession or control of the broker-dealer by settlement date, and is thus a "short" sale under the marking requirements of Rule 200(g) as adopted.

[109] *See* Letter Type A; SIA. The Commission disagrees with these comments. We believe that the provisions of Rule 203(a) are appropriate to guard against fails to deliver on long sales, in that a broker may fail to deliver borrowed shares on long sale fails only in the limited circumstances set forth in the rule. In addition, Rule 203(b)(3) requires a participant to close out all fails to deliver that remain in threshold securities for 13 consecutive settlement days. 17 CFR 240.15c–3–3(m) also addresses fails to deliver on long sales.

[110] *See* Rule 203(a)(2)(ii).

[111] It may be unreasonable for a broker-dealer to treat a sale as long where orders marked "long" from the same customer repeatedly require borrowed shares for delivery or result in "fails to deliver." A broker-dealer also may not treat a sale as long if the broker-dealer knows or has reason to know that the customer borrowed the shares being sold.

[112] As with other provisions of Regulation SHO, this provision requires good faith conduct by the broker-dealer. Therefore, where the broker-dealer did not in good faith believe that the customer would deliver the securities in time for settlement, the broker-dealer cannot borrow or lend securities to deliver when the customer fails.

long, the seller must own the security.[113]

VII. Rule 105 of Regulation M—Short Sales in Connection with a Public Offering

A. Generally

Rule 105 of Regulation M prohibits a short seller from covering short sales with offering securities purchased from an underwriter or broker or dealer participating in the offering, if the short sale occurred during the Rule's restricted period, typically the five-day period prior to pricing.[114] The reason for the prohibition is that pre-pricing short sales that are covered with offering shares artificially distort the market price for the security, preventing the market from functioning as an independent pricing mechanism and eroding the integrity of the offering price.[115] Prices of "follow-on offerings"[116] are typically based on a stock's closing price prior to the time of pricing, and thus short sales during the period immediately preceding pricing that reduce the market price can result in a lower offering price. The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces.

Rule 105 does not prohibit pre-pricing short sales, in recognition of the fact that if such sales are motivated by a short seller's evaluation of the stock's future performance, they can contribute to pricing efficiency and the creation of a correct market price. Rule 105 does, however, prohibit using offering shares to cover any such pre-pricing short sales. A trader who sells short pre-pricing and knows or has a high degree of assurance that he will be able to obtain covering shares in the offering does not assume the same market risk as a short seller who intends to cover using open market shares, and may not be contributing to pricing efficiency and true price discovery. Therefore, the rule prohibits pre-pricing short sales, effected within five days of pricing of an offering, from being covered with offering securities acquired from an underwriter or other broker-dealer participating in the offering. Moreover, this manipulative conduct can negatively affect the issuer, which receives reduced offering proceeds as a result of the lower offering price, and harms the market by inhibiting the capital raising process. In addition, the presence of such shorting activity can lead other investors, who believe that the short selling is the result of an evaluation of the stock's value, to sell short as well. By prohibiting such artificial selling activity, the Rule contributes to the integrity of the capital raising process.

B. Shelf Offerings

In the Proposing Release, we proposed to amend Rule 105 to eliminate the shelf offering exception.[117] We are adopting the amendment as proposed.

When the Commission initially adopted the shelf exception in Rule 105, it stated that it might be necessary for the Commission to reevaluate the exception in the event such offerings became more common.[118] One of the reasons for the adoption of the shelf offering exception was the generally accepted view that shelf offerings were not as susceptible to manipulation as non-shelf offerings.[119] At the time Regulation M was adopted, it was our understanding that potential investors generally were not aware of a takedown from a shelf registration until immediately prior to its occurrence, and thus pre-pricing short sales were arguably not focused on the prospective offering. Today, however, shelf offerings can have many characteristics of non-shelf offerings. They are likely to utilize the same marketing efforts—road shows and other special selling efforts—that are used with non-shelf offerings, and thus investors often have notice of a shelf offering before it occurs. Moreover, since the initial adoption of Rule 105, equity shelf offerings have become commonplace.

We believe that using offering shares to cover short sales effected prior to pricing of a shelf offering has the same negative effect as in non-shelf offerings. In light of the increased use of shelf offerings, we believe that the shelf exception presents an increased potential for the type of manipulative conduct that Regulation M is designed to prevent.

We received three comment letters on Rule 105.[120] One commenter argued that the exception should be retained because allowing offerees to act on their conviction that the proposed offering is overpriced by shorting in advance of pricing, leads to the creation of a "true" market price.[121] As noted above, Rule 105 does not prevent short sellers from contributing to pricing efficiency by short selling in advance of an offering. Another commenter urged the Commission to retain the exception for shelf offerings that occur on an "overnight" or "bought deal basis" where no red herring or preliminary prospectus is distributed.[122] The Commission believes that even though no preliminary prospectus is issued in these takedowns, manipulative pre-pricing short sales could take place if other marketing efforts prior to the offering put investors on notice of the offering. We therefore believe that granting a blanket exception for these offerings is not appropriate.

By providing that shelf offering prices will be based upon market prices that are not artificially influenced, the amendment will benefit both issuers and investors. It will promote the integrity of the capital raising process, enhance investor confidence in our markets, and help protect issuers conducting shelf offerings from receiving reduced offering proceeds as a result of manipulative conduct.[123]

C. Sham Transactions

In the Proposing Release, the Commission noted its concern with sham transactions that are structured to appear to comply with Rule 105, but which in fact violate the Rule. Such transactions are undertaken to give the appearance that pre-pricing short sales are not covered with offering shares, but instead are covered with shares purchased in the open market. We sought comment on how to address

[113] See, *supra* part III.B. for a discussion of the order marking requirements.

[114] 17 CFR 242.105.

[115] As noted in the Proposing Release, Rule 105 of Regulation M applies to offerings of securities for cash pursuant to a registration statement or a notification on Form 1–A filed under the Securities Act.

[116] A "follow-on offering" is an issuance of additional securities by an issuer that is subject to the reporting requirements pursuant to Sections 13 or 15(d) of the Exchange Act. 15 U.S.C. 78m, 78o(d).

[117] *See* Proposing Release, Section XVI.

[118] *See Anti-Manipulation Rules Concerning Securities Offerings; Final Rule*, Securities Exchange Act Release No. 38067, 62 FR 520, 538 (January 3, 1997) ("Regulation M Release"), where the Commission stated "it may be necessary for the Commission to reevaluate this exclusion if the availability of shelf registration is further expanded or offerings of shelf-registered equity become more common-place."

[119] *See Short Sales in Connection With a Public Offering*, Securities Exchange Act Release No. 26028, 53 FR 33455, 33458 (August 25, 1988) ("Rule 10b–21(T) Release"), adopting Rule 10b-21(T).

[120] *See* letters from The Bond Market Association ("TBMA"); Feldman; SIA.

[121] *See* letter from Feldman, at 5.

[122] *See* letter from SIA.

[123] One commenter asked the Commission to consider excluding non-equity securities offerings from the scope of Rule 105, claiming that the type of manipulative activity with which Rule 105 is concerned is less likely to occur in debt offerings than in equity offerings. *See* TBMA letter. We continue to believe that bond offerings present a potential for manipulation, and we have therefore determined that non-equity offerings will continue to be subject to the prohibitions of Rule 105. The Commission will consider granting exemptive relief on a case-by-case basis where warranted.

these transactions. We did not receive any comments on this issue. We have decided to issue interpretive guidance to address transactions that violate Rule 105 by utilizing offering-shares to cover short sales made in the pre-pricing restricted period, while structuring the transactions so as to falsely give the appearance that the short sale has been covered using shares purchased in the open market. Transactions structured in this way violate Rule 105. Some examples of sham transactions that would violate Rule 105 follow. These examples are illustrative, and are not meant to be exhaustive.

1. Arrangements To Purchase

In the first example of a sham transaction, short sales are effected during the pre-pricing restricted period and are covered using offering securities obtained through an arrangement with a third party who acquires the securities in the primary offering.[124] In this transaction, the trader is attempting to accomplish indirectly what he or she cannot do directly, *i.e.*, a type of short sale transaction prohibited by Rule 105.[125]

2. Sell/Buy and Buy/Sell

In the second example of a sham transaction, a trader effects pre-pricing short sales during the Rule 105 restricted period, receives offering shares, sells the offering shares into the open market, and then contemporaneously or nearly contemporaneously purchases an equivalent number of the same class of shares as the offering shares, which are then used to cover the short sales. Where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership,[126] and/or little or no market risk, that transaction may be a sham transaction that violates Rule 105.

We do not believe it necessary or desirable to add rule language to address these kinds of trading, as this activity violates the current rule and can vary in its details. The Commission will continue to enforce Rule 105 in the face of sham transactions designed to evade the Rule. In addition, if such sham transactions are used as part of a fraudulent or manipulative scheme, the conduct may also violate the Commission's anti-fraud and anti-manipulation provisions, including but not limited to, Sections 9(a) and 10(b) of the Exchange Act.[127]

VIII. Paperwork Reduction Act

The adopted amendments to Regulation SHO contain collection of information requirements within the meaning of the Paperwork Reduction Act of 1995.[128] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved these requests. We did not receive comments on the proposed collection of information requirements.

Compliance with the adopted amendments to Regulation SHO and Rule 105 of Regulation M will be mandatory. The Commission will not keep the information required by the amendments confidential. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. The title of the affected collection is "Regulation SHO" under OMB control number 3235–0589.

A. Summary of Collections of Information

Rule 200(g) contains a requirement that all sell orders in equity securities be marked "long," "short," and "short exempt." Currently, Rule 10a–1(c) prohibits the execution of a sell order for a security covered by Rule 10a–1 unless the order is marked either "long" or "short." Regulation SHO contains a new collection of information because the collection would cover a much larger number of securities. Rule 200(g) of Regulation SHO adds two elements to the existing marking requirement. First, a new category for "short exempt" orders is being added. Second, the marking requirement is being extended to apply to all equity securities, including exchange-listed securities, Nasdaq NMS, Nasdaq SmallCap, OTCBB, and Pink Sheet securities. By adopting Rule 200(g) of Regulation SHO, Rule 10a–1(c) is being repealed and any collection of information under Rule 10a–1 is being eliminated.

Sell orders of exchange-listed and Nasdaq securities are already marked "long," "short," or "short exempt" pursuant to Rule 10a–1, NYSE Rule 440B.20, and the ITS Plan. Nasdaq NMS and Nasdaq SmallCap securities are also currently subject to a marking requirement pursuant to NASD Rule 4991. Rule 200(g) of Regulation SHO simply codifies current industry practice for exchange-listed and Nasdaq securities into a uniform marking requirement.

Rule 203(b)(1) contains a requirement that broker-dealer must locate securities available for borrowing prior to effecting a short sale transaction. Subparagraph (iii) of Rule 203(b)(1) requires documentation of compliance with Rule 203(b)'s locate requirement. We note, however, that current SRO rules already require a written record documenting compliance with their locate rules.[129]

B. Use of Information

The information required by Regulation SHO is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative and deceptive acts and practices by broker-dealers. The purpose of the information collected is to enable the Commission, a national securities exchange or national securities association to monitor whether a person effecting a short sale covered by proposed Regulation SHO is acting in accordance with Regulation SHO. In particular, requiring each order to be marked either "long," "short," or "short exempt" would aid in ensuring compliance with Rule 203 and current Rule 10a–1. Moreover, the "short exempt" category will aid in surveillance for compliance with the exceptions from these rules.

C. Respondents

The marking provision in Rule 200(g) will apply to all 6,553 active brokers or dealers that are registered with the Commission. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under proposed Regulation SHO.

D. Total Annual Reporting and Recordkeeping Burdens

Rule 200(g) of Regulation SHO requires all brokers or dealers to mark

[124] The Commission has previously stated its concern with transactions where an intermediary is used to purchase covering-shares from the offering. *See* Rule 10b–21(T) Release, 53 FR at 33460.

[125] *See also* Exchange Act Section 20(b), 15 U.S.C. 78t.

[126] *See also* Exchange Act Section 9(a)(1), 15 U.S.C. 78i(a)(1). For example, an individual places limit orders to sell and buy the same amount of shares, and the transaction is crossed in the individual's brokerage account. There is no change in beneficial ownership and no market risk associated with the transaction, *i.e.*, these are "wash sales." Although the individual has attempted to disguise the fact that the offering shares are being used to cover the short sale, in fact, he is covering his pre-pricing short sale with shares obtained in the offering. *See, e.g.*, Ascend Capital, LLC, Securities Exchange Act Release No. 48188 (July 17, 2003).

[127] 15 U.S.C. 78i(a), 78j(b).

[128] 44 U.S.C. 3501.

[129] NASD Rule 3370(b)(4)(B).

all sell orders appropriately as "long," "short," or "short exempt" for all equity securities. We estimate that all of the approximately 6,553 active registered broker-dealers [130] effect sell orders in securities covered by proposed Regulation SHO. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that a total of 1,465,563,860 trades are executed annually.[131]

Currently, under both Commission and SRO rules, broker-dealers are obligated to document certain order information. Rule 10a–1 requires sell orders of exchange-listed and Nasdaq securities to be marked "long," "short," or "short exempt." NYSE Rule 440B.20, the ITS Plan, and NASD Rule 4991 [132] additionally impose a marking requirement. Rule 200(g) of Regulation SHO simply codifies the current practice for exchange-listed and Nasdaq securities into a uniform marking requirement.

Based on the number of annual trades and number of active registered broker-dealers, the average annual responses by each respondent is approximately 223,647. Each response of marking orders "long," "short," or "short exempt" takes approximately .000139 hours (.5 seconds) to complete.[133] Thus, the total estimated annual hour burden per year is 203,713 burden hours (1,465,563,860 responses @ 0.000139 hours/response). A reasonable estimate for the paperwork compliance for the proposed rules for each broker-dealer is approximately 31 burden hours (223,647 responses @ .000139 hours/response) or a total of 203,713 burden hours/6,553 respondents.

IX. Cost-Benefit Analysis

We are sensitive to the costs and benefits of our rules and we have considered the costs and benefits of our adopted rules. To assist us in evaluating the costs and benefits, in the Proposing Release, we encouraged commenters to discuss any costs or benefits that the rules might impose. In particular, we requested comment on the potential costs for any modification to both computer systems and surveillance mechanisms and for information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for registrants, issuers, investors, brokers or dealers, other securities industry professionals, regulators, and others. Commenters were requested to provide analysis and data to support their views on the costs and benefits associated with proposed Regulation SHO and proposed amendments to Rule 105 of Regulation M. We received very few comments providing cost or benefit estimates.

A. Costs and Benefits of the Adopted Amendments in Regulation SHO

We believe that Regulation SHO simplifies and updates short sale regulation in light of numerous market developments since short sale regulation was first adopted in 1938. First, Rule 200 incorporates current Rule 3b–3 to provide ownership definitions for short sale purposes, clarifies the requirement to determine a seller's net aggregate position, and requires sales in all equity securities to be marked "long," "short," or "short exempt." Second, Rule 202T establishes procedures for the Commission to exclude designated securities from the operation of the tick test of Rule 10a–1 and any short sale price test rule of any exchange or national securities association. Third, Rule 203 incorporates current provisions applicable to long sales under current Rule 10a–2. Rule 203 additionally creates a uniform Commission rule requiring broker-dealers to "locate" securities available for borrowing prior to effecting short sales in all equity securities, and imposes additional requirements on securities that have a substantial amount of failures to deliver. Finally, the amendments to Rule 105 of Regulation M, eliminate the current shelf offering exception, such that short sales may not be covered with offering securities purchased from an underwriter or other broker-dealer participating in the shelf offering.

1. Rule 200: Definitions

a. Ownership of Securities Underlying Securities Futures Products

i. Benefits

The codification of existing Commission guidance regarding when a person is deemed to own a security underlying a securities futures contract provides important compliance benefits. The interpretation is designed to ensure consistency with the way current Rule 3b–3 addresses several instances where a person owns a security that entitles a person to acquire securities underlying the instrument, *e.g.*, options, rights, warrants, and convertibles. Additionally, by codifying existing guidance, Regulation SHO clarifies and facilitates compliance with the short sale rule for persons trading in securities futures.

ii. Costs

We do not believe that codifying existing guidance will impose costs or result in lost business opportunities. Although the Commission did not receive comments quantifying the costs related to the codification, we note that the guidance is well established and has been adhered to by the industry.[134]

b. Aggregation Units

i. Benefits

Permitting aggregation unit netting provides enhanced flexibility and liquidity to both broker-dealers and the market as a whole. Subject to four expressed conditions, Rule 200(f) permits multi-service broker-dealers to calculate net positions in a particular security within defined trading units apart from the positions held by other aggregation units within the firm. This allows multi-service firms to pursue different trading strategies, within certain parameters, without being restricted by limitations associated with firm-wide aggregation. The greater trading flexibility, through use of aggregation unit netting, should improve the liquidity provided by these firms.

ii. Costs

We believe that there are no costs associated with aggregation unit netting since firms are not required to use aggregation units. Aggregation of net positions within defined trading units is entirely optional and will likely be used by firms that believe it is cost effective to do so. However, firms that choose to make use of aggregation unit netting must comply with requirements set forth in Rule 200(f).[135] Compliance with aggregation unit netting requirements may impose fewer costs to broker-dealers than if the firms use alternative means, such as establishing separate broker-dealers for each trading desk's strategy to ensure the independence of each trading desk. Industry sources maintain that the costs associated with aggregation unit netting are nominal. Furthermore, the technology to facilitate

[130] This number is based on 2003 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[131] In calendar year 2003, there were approximately 722,753,000 trades on the NYSE, 733,410,000 on Nasdaq NMS and Nasdaq SmallCap, and over 9,400,860 in OTCBB, Pink Sheet, and other (gray market) securities.

[132] For Nasdaq NMS and Nasdaq SmallCap securities.

[133] As stated in the Proposing Release, we believe it is reasonable that it would take 0.5 seconds (or .000139 hours) to mark an order "long," "short," or "short exempt."

[134] *See* Guidance Release, at n. 18, *supra*.

[135] Firms that find difficulty in complying with the aggregation unit netting conditions in Rule 200(f) may submit requests for exemptive relief.

aggregation unit netting is widely available.

c. Liquidation of Index Arbitrage Position

i. Benefits

Codifying the liquidation index arbitrage relief, in Rule 200(e), facilitates pricing efficiency while preserving the fundamental objectives of short sale price regulation. By focusing on the timing of the liquidation of all the index arbitrage positions, rather than on the timing of the establishment of individual index arbitrage positions,[136] Rule 200(e) relieves firms from the compliance burdens of tracking different positions of fungible securities according to the timing or circumstances related to their acquisition. Additionally, it reduces the possibility of unintended effects that may penalize buy-side index arbitrage strategies involving the purchase of stocks during times of market stress.

Subparagraph (e)(3) of Rule 200 provides a 2% market decline restriction[137] so that markets can avoid incremental selling pressure during volatile trading days. The safeguard benefits all market participants by limiting selling pressure at the close of trading on a volatile trading day and at the opening of trading on the following day, since trading activity at these times may have a substantial effect on the market's short-term direction. Lastly, inclusion of the 2% safeguard provides consistency within the equities markets. In 1999, the NYSE amended its rules on index arbitrage restrictions to include the 2% trigger.[138] The Commission's adoption of the same trigger provides a uniform protective measure.

ii. Costs

If the unwinding of the index arbitrage position occurs during a period when the DJIA has declined by 2%, short sellers will not be permitted to use the price test exemption, and thus will incur additional costs.[139] Therefore, Rule 200(e)(3) may increase costs for short sellers during certain times of market decline. We estimate that any costs incurred will be limited to compliance with Rule 10a–1's tick test. The safeguard simply limits the relief from the price test for short sales of securities held in an index arbitrage position. The Commission did not adopt a blanket prohibition of short sales during a market decline; rather, the effect of subparagraph (e)(2) is to require such sales to comply with the short sale price test.

d. Order Marking Requirement

i. Benefits

The new order marking requirements provide important benefits for investors and the market as a whole. First, because the new order-marking requirements extend beyond exchange-listed equity securities to include over-the-counter equity securities, *i.e.*, OTCBB and Pink Sheet securities, they provide a uniform practice designed to ensure consistency within the equity markets. Second, the marking requirement will generate information identifying when and under what circumstances certain exceptions to the price test are used. Third, the new marking requirements benefit the surveillance of previously undetected violations of Rule 10a–1. Under the prior requirements, orders marked "long," despite having to borrow shares to consummate delivery, were handled and executed as long sales.

Furthermore, the requirement of physical possession or control, or the reasonable expectation that the security will be in the possession or control of the broker-dealer no later than settlement, in order to mark an order "long," benefits the clearance and settlement process. Clearance and settlement systems are designed to preserve financial integrity and minimize the likelihood of systematic disturbances by instituting risk-management systems. Requiring a broker-dealer to have possession or control of the securities before it can mark an order long, assists in mitigating settlement and credit risks that can affect the stability and integrity of the financial system as a whole.

ii. Costs

The addition of the classification of "short exempt" to the marking requirements will impose certain nominal costs on broker-dealers. According to industry sources, some broker-dealers already use the short exempt classification when marking certain sell orders. Additionally, SRO rules already either require or advise members to utilize the "short exempt" designation on such sell orders. However, broker-dealers not already using the "short exempt" classification will incur a one-time cost associated with programming. Industry sources estimated that implementation costs would be approximately $100,000 to $125,000.

The Commission recognizes that there is an ongoing paperwork burden cost associated with adding the "short exempt" category and extending the marking requirement to all equity securities. The paperwork burden is estimated to be approximately 31 burden hours for each active broker-dealer registered with the Commission.[140]

We do not believe the new order marking requirements will impose additional monitoring or surveillance costs for registered broker-dealers. Registered broker-dealers already have established systems in place to comply with current SRO rules.

The Commission estimates that little to no costs will arise from the requirement that sell orders be marked long only in cases where the securities to be sold are owned by the customer and either are presently, or reasonably expected to be, in the customer's account prior to settlement. Most customer securities are not held by investors in physical form, but rather are held indirectly through their broker-dealer in "street name." Furthermore, commenters did not indicate any significant burden associated with the requirement.

2. Rule 202T: Pilot

Rule 202T establishes procedures for the Commission to temporarily suspend the trading restrictions of the Commission's short sale price test, as well as any short sale price test of any exchange or national securities association, for short sales in such securities as the Commission designates

[136] As provided in the Merrill Lynch Letter. See Securities Exchange Act Release No. 27938, n. *supra*.

[137] For Rule 200(e)(3) relief, the sale does not occur during a period commencing at the time that the Dow Jones Industrial Average ("DJIA") has declined below its closing value on the previous trading day by at least two percent and terminating upon the establishment of the closing value of the DJIA on the next succeeding trading day during which the DJIA has not declined by two percent or more from its closing value on the previous day.

[138] Securities Exchange Act Release No. 41041 (February 11, 1999) 64 FR 8424 (February 19, 1999) (approval of amendments to NYSE Rule 80A). We note that NYSE 80A removes the stabilizing requirement if the DJIA moves within 2% of the previous day's close.

[139] Short sellers would have to aggregate in the usual way, with all of the seller's other positions in that security, to determine whether the seller has a net long position.

[140] This is an average of approximately 223,647 annual responses by each respondent. Each response of marking orders "long," "short," or "short exempt" takes approximately .000139 hours (.5 seconds) to complete. Thus, the total approximate estimated annual hour burden per year is 203,713 burden hours (1,465,563,860 responses at 0.000139 hours per response). A reasonable estimate for the paperwork compliance for the proposed rules for each broker-dealer is approximately 31 burden hours (223,647 responses at .000139 hours per response) or a total of 203,713 burden hours between 6,553 respondents.

by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving due consideration to the security's liquidity, volatility, market depth and trading market.

a. Benefits

We believe establishing procedures for the Commission to adopt a pilot pursuant to Rule 202T is an essential component of evaluating the overall effectiveness of price test restrictions on short sales. Any such pilot would be intended to: provide data on the impact of short selling in the absence of a price test; study the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity; and obtain empirical data to help us assess whether a price test is necessary to further the objectives of short sale regulation and whether short sale price tests should be removed, in part or in whole, for actively traded securities or for all securities, or if retained, whether it should be extended to securities for which there currently is no price test.

We believe that there will be both short-term and long-term benefits from any such pilot. In the short-term, the removal of the price test for a specified period would immediately ease restrictions on short sales and might benefit investors and the markets without necessarily compromising the policy goals that a prophylactic price test is designed to address. Removing such restrictions could facilitate market participants' hedging activities in the securities included in the pilot, and might facilitate short selling that increases market liquidity and pricing efficiency. Short selling in the absence of a price test might increase the number of shares available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary contraction of selling interest due to short sale price restrictions.

In the long-term, a pilot would allow the Commission to obtain empirical data necessary to consider alternatives, such as eliminating a Commission mandated price test for an appropriate group of securities, which may be all securities; adopting a uniform bid test, possibly extended to securities for which there is currently no price test; or leaving in place the current price tests. Historically, the possibility of considering such alternatives has been hampered by a lack of data concerning short selling, particularly with regard to listed-securities. Without empirical data relating to short selling in the absence of a price test in today's market, we believe that only broad conclusions could be derived with respect to the general impact of such short selling. Consequently, we believe that it is beneficial to establish a pilot to obtain empirical data in order to assist us in ascertaining whether to implement a price test, in whole or in part, for short sales in some or all securities, including securities not currently subject to any price test.

b. Costs

As an aid in evaluating costs, we sought comment in the Proposing Release concerning the public's views as well as any supporting information. Specifically, we sought detailed comment on the extent of required system changes and costs associated with implementation of a pilot program. Many industry commenters favored the creation of a pilot.[141] Operation of the pilot could cause additional costs to brokers, dealers, SROs, and potentially to issuers and investors. SROs and broker-dealers might need to make system changes in order to exclude the selected securities from the Commission's tick test as well as any SRO price test.

Based on comments from the industry, we estimate that a pilot established under Rule 202T could require broker-dealer firms to reconfigure systems that currently set price test restrictions on short sales, which could impose modest costs. We anticipate that firms would have to remove existing price test restrictions for short sales of specified securities. The implementation of these modifications would require a readily identifiable, one-time adjustment. Market participants already remove the NASD's short sale rule, Rule 3350, after traditional market hours, as it is not applicable during that time,[142] so application of any pilot to Nasdaq securities would not likely require the development of any new programs or surveillance systems.

Some commenters expressed a concern about pilot-related costs borne by issuers. According to these commenters, these costs could arise from possible manipulative short selling in the absence of price restrictions or pricing anomalies between securities in the same industry subject to a pilot and similar securities not subject to the price test. These commenters also asserted that a pilot might create a confusing system that will slow trading, lead to errors and confound market participants.

Most of the more liquid securities that would be appropriate for a pilot are traded on exchanges or other organized markets with high levels of transparency and surveillance. This would enhance the ability of the Commission and SROs to monitor trading behavior during the operation of any pilot and to surveil for manipulative short selling.[143] Moreover, the general anti-fraud and anti-manipulation provisions of the federal securities laws would continue to apply to trading activity in these securities, thus prohibiting trading activity designed to improperly influence the price of a security.[144] To the extent there are price and trading activity variations, this is precisely the empirical data that the Commission seeks to obtain and analyze as part of our assessment as to whether the price test should be removed, in part or whole, for pilot securities or other securities. In addition, a pilot would suspend only the operation of the price test, while the other requirements of Regulation SHO, including the order marking, locate and delivery requirements, would remain in effect.

The Commission, by further order, can terminate or extend the period of a pilot, remove or add some or all securities selected for a pilot as it determines necessary or appropriate in the public interest or to protect investors. Thus, costs associated with any manipulative short selling or price variations may be ameliorated through the termination of the pilot or removal of affected securities.

3. Rule 203: Locate and Delivery Requirements for Short Sales

a. Benefits

As adopted, Rule 203(b) creates a uniform Commission rule requiring

[141] *See* letters from James Angel; ARCA; Yuseff J. Burgess; CBOE; Dario Cosic; Davis Polk; Timothy K. Dolnier; Tolga Erman; Chris Freddo; Kristopher Goldhair; Chris Gregg; Marc Griffin; Charles W. Hansford; Zachary Hepner; ICI; Mike Ianni; Brian Ingram; Kevin Karlberg; Gregory Kleiman; LEK Securities; Michael Lucarello; Lux & Metzger; MFA; Raymond J. Murphy; Nasdaq; Osmar92@optonline.net; Tal Plotkin; David Schwarz; Sinan Selcuk; Theodore J. Siegel; Todd Sherman; SIA; Dan Solomon; STA; STANY; Jimmie E. Williams; Willkie Farr.

[142] *See* NASD Head Trader Alert #2000–55 (August 7, 2000).

[143] No individual issuers submitted comment letters opposing the pilot or expressing concern about the possible disparate trading of securities subject to the pilot or about the possible adverse impact on their securities should the price test be removed from short selling in their stock on a temporary basis. The NYSE submitted a letter expressing concern, "on behalf of its members and its listed companies" strongly supporting continued price restrictions and expressing concern about unscrupulous market participants forcing prices lower in stocks not subject to a price test.

[144] *See, e.g.*, Securities Act Section 17(a), and Exchange Act Sections 9(a), 10(b), and 15(c) and Rules 10b–5 and 15c1–2 thereunder.

broker-dealers to follow specified procedures for short sellers in all equity securities, wherever traded. Rule 203(b) requires that, prior to effecting short sales in all equity securities, broker-dealers must "locate" securities available for borrowing. This uniform rule furthers the goals of regulatory simplification and avoidance of regulatory arbitrage. Specifically, Rule 203(b) prohibits a broker-dealer from executing a short sale in any equity security, for the broker-dealer's own account or the account of another person, unless the broker-dealer has (1) borrowed the security, or entered into an arrangement to borrow the security, or (2) has reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due. Rule 203 requires that the locate be made and documented prior to effecting any short sale, regardless of whether the seller's short position may be closed out by purchasing securities the same day. The Commission has also adopted additional requirements targeted at "threshold securities" that have a substantial amount of failures to deliver, *i.e.*, any equity security of an issuer registered under Section 12 or required to file reports under Section 15 of the Exchange Act where there are fails to deliver at a registered clearing agency of 10,000 shares or more per security; that the level of fails is equal to at least one-half of one percent of the issue's total shares outstanding; and the security is included on a list published by an SRO. In order to be subject to the restrictions of Rule 203, a security must exceed the designated level of fails for a period of five consecutive settlement days. Similarly, in order to be removed from the list of threshold securities, a security must not exceed the threshold for a period of five consecutive settlement days.

A broker-dealer is required to take additional steps should a fail in a threshold security remain 10 days after the normal settlement date, *i.e.*, for 13 consecutive settlement days. Specifically, Rule 203(b)(3) requires the participant of a registered clearing agency to take action to close out the fail to deliver by purchasing securities of like kind and quantity.

The new locate and delivery requirements will protect and enhance the operation, integrity, and stability of the markets. For example, the requirements of Rule 203 include securities with lower market capitalization that may be more susceptible to abuse. Also, adopting uniform rules will further the goals of regulatory simplification and avoidance of regulatory arbitrage, as well as assist the Commission in its enforcement efforts regarding naked short selling activity. Certain issuers have taken steps to make their securities either "certificate only," which require physical certification of company ownership for all share transfers, or "custody only," which restricts ownership of their securities by depositories or financial intermediaries, which they assert has been done to avoid the effects of naked short selling of their securities. These custody arrangements are highly costly to the clearing agencies, depositories and financial intermediaries. Imposing a requirement to close-out large fails at the clearing level may decrease costs on the clearing agency by reducing the requests for "certificate only" issues.[145]

b. Costs

The Commission recognizes that locate and delivery requirements may increase costs for some market participants who engage in short selling. The Commission is, however, including an exception from the locate requirements of Rule 203(b)(1) for short sales executed by market makers in connection with bona-fide market making activities. In addition, any costs that initially may be incurred should be mitigated over time because the uniform rule should lead to regulatory simplification with regard to training and surveillance.

The rule includes certain exceptions from the locate requirement, which mitigate many associated cost burdens. The rule provides an exception for bona-fide market making. This exception covers short sales executed by market makers, including specialists and options market makers, in connection with bona-fide market making activities. Excepting bona-fide market making activity from the locate requirement will benefit investors and the market by preserving necessary market liquidity.

A second exception is for broker-dealers that receive a short sale order from another registered broker-dealer that is required to have already complied with Rule 203(b)(1). This exception relieves the executing broker-dealer from engaging in a second locate for the transaction. This exception limits the possibility of over borrowing as well as any delay in execution.

A third exception to the locate requirement covers situations where a broker effects a sale on behalf of a customer who owns the security pursuant to Rule 200, but through no fault of the customer or broker-dealer, it is not reasonably expected that the security will be in the possession or control of the broker-dealer by settlement date. Under the newly adopted marking requirement, this sale would be marked "short." Such situations could include where a convertible security, option, or warrant has been tendered for conversion, but the underlying security is not reasonably expected to be received by settlement date.

There may be costs associated with implementing these locate requirements for OTCBB and Pink Sheet securities. For example, a number of commenters noted that there might not be a broad pool of lendable securities in such issuers, due to the inability of firms to hypothecate shares bought on margin, and due to the absence of institutional lenders in these securities. This could affect the ability of these small issuers to obtain financing through the issuance of convertible debentures, in that market participants that buy these convertible debentures may not be able to sell short for hedging purposes if they are unable to locate the issuer's securities.

In addition, other commenters also noted that, due to the absence of stock available for borrowing in these issuers, requiring short sellers to locate such securities could essentially remove the ability to take short positions in these stocks, and would help to facilitate issuers, promoters, or other shareholders that may be attempting to manipulatively push up the company's stock price. These commenters noted their belief that some issuers and their associated stock promoters may also be using the recent controversy over naked short selling to engage in fraud, or otherwise distract investors from fundamental problems with the company.

It is the Commission's belief that removing all restrictions on the ability to effect naked short sales is not the proper recourse against potential issuer fraud, as it may simply encourage another type of manipulation or exacerbate other potentially negative consequences associated with large failures to deliver. Nevertheless, the

[145] The Commission approved a rule change filed by DTC that clarified that DTC's rules permit only its participants to withdraw securities from the depository. See Securities Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003). In addition, the Commission recently proposed a rule, "Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries," which would prohibit a registered transfer agent from transferring any equity security registered pursuant to Section 12 of the Exchange Act, or any equity security that subjects an issuer to reporting under Section 15(d) of the Exchange Act, if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary. See Securities Exchange Release No. 49804 (June 4, 2004), 69 FR 32783 (June 10, 2004).

Commission is cognizant of these concerns and is taking action to combat such activities. For example, the Commission continues to bring enforcement actions for issuer fraud, including actions against some of the companies that have claimed to be "victims" of naked short selling.[146] In addition, the Commission recently proposed other steps to protect investors by deterring fraud and abuse in the securities markets through the use of "shell companies." [147]

The greatest costs associated with Rule 203's requirements relate to controlling failures in threshold securities.[148] Participants of a registered clearing agency, broker-dealers, market makers, and SROs may incur costs in making initial system changes necessary to implement these new requirements, as well as maintaining ongoing compliance and surveillance mechanisms. Comments from the industry maintained that any one-time programming costs would be "manageable" or "nominal." [149] Since NSCC already provides to the SROs information on all issuers that have failed to deliver in excess of 10,000 shares, this will mitigate any cost burdens on accessing the information. Furthermore, this information can be matched with the readily available information on an issuer's total shares outstanding to determine whether the security meets the definition of a threshold security under Regulation SHO.

However, some industry sources argued that the ongoing cost of requiring broker-dealers, including market makers,[150] to borrow or arrange to borrow for future short sales if there was not compliance with the requirement to close-out fails to deliver in threshold securities would decrease liquidity, impose large borrowing costs and execution delay. Also, some commenters, including options market makers and options exchanges, noted that if we do not include such an exception would be to cease altogether options trading in securities that are difficult to borrow, as it was argued that no options market maker would make markets without the ability to hedge.

We note that the close out requirements of Rule 203(b)(3) will only apply to short sales in securities that meet the designated threshold level of fails, and similar to the current operation of NASD Rule 11830, will not apply to any short sales effected prior to the security meeting the threshold. We have noted the above concerns, but believe that they may be exaggerated, especially considering that OEA has estimated that threshold securities represent approximately 4% of the equities markets.[151] Also, any cost estimates related to the narrowly applied borrowing requirement appear extremely speculative.[152] In light of this, we do not expect that excluding a market maker exception from the close out requirement of Rule 203(b)(3) would have such adverse consequences.

4. Rule 203: Requirements for Long Sales

Rule 203(a) incorporates Rule 10a–2, which covered delivery requirements applicable to long sales of securities registered or admitted to unlisted trading privileges on a national securities exchange. As adopted, Rule 203(a) generally provides that if a broker-dealer knows or should know that a sale is marked long, the broker-dealer must make delivery when due and cannot use borrowed securities to do so.[153] Rule 203(a) extends these delivery requirements to all securities, including those not registered on an exchange. In addition, Rule 203(a) makes clear that a broker or dealer may not fail to deliver, nor may it loan securities for delivery on a sale marked "long," unless, prior to the sale, the broker or dealer knew that the seller owned the securities and the seller represented that he would deliver them to the broker in time for settlement but failed to do so.

a. Benefits

Extending the long sale delivery requirements to all securities will benefit investors and the markets, because as with short sales, delivery requirements are important in securities with lower market capitalization that may be more susceptible to abuse. Moreover, Rule 203(a) states that a broker-dealer cannot fail or loan shares on a long sale unless, in advance of the sale, the broker-dealer ascertains that the customer owned the shares. This change, together with changes being made to the long sale order marking requirements, provide an important benefit to the market by making clear a broker's obligation to confirm the long seller's ownership of the shares prior to executing the sale.

b. Costs

Although we sought public comment on costs, we did not receive any comments relating to Rule 203(a). We recognize that there may be some costs associated with extending the delivery requirements to all securities, including costs related to system changes and surveillance. However, since market participants already must comply with the current language of Rule 10a–2, we expect any costs will be nominal. The benefit of a uniform delivery scheme for long sales justifies any costs that will be incurred by market participants.

5. Rule 105 of Regulation M

Rule 105 of Regulation M prohibits a short seller from covering short sales with offering securities purchased from an underwriter, broker or dealer participating in the offering if the short sale occurred during the Rule's restricted period, typically the five-day period prior to pricing. The reason for the prohibition is that pre-pricing short sales that are covered with offering shares artificially distorts the market price for the security, preventing the market from functioning as an independent pricing mechanism and eroding the integrity of the offering

[146] *See, e.g.*, SEC vs. Universal Express, Inc., *et. al.*, Litigation Release No. 18636 (March 24, 2004). Securities Exchange Act Release No. 49566 (April 15, 2004).

[147] Securities Exchange Act Release No. 49566 (April 15, 2004). The proposal would prohibit the use of Form S–8, under the Securities Act, by a shell company. In addition, the release proposes amendments to Form 8–K, under the Exchange Act, to require a shell company, when reporting an event that causes it to cease being a shell company, to file with the Commission the same type of information that it would be required to file to register a class of securities under the Exchange Act. The provisions in this release target regulatory problems that the Commission has identified where shell companies have been used as vehicles to commit fraud and abuse the regulatory processes.

[148] The general locate requirement for short sales will not impose additional costs on broker-dealers, since current SRO rules require broker-dealers to effect such a locate.

[149] Industry participants appeared more concerned with having enough time to make the necessary programming and systems upgrades than the actual costs related to such upgrades.

[150] We have decided at this time not to extend to market makers an exception from the additional requirements to close out fails to deliver in securities exceeding the threshold that remain ten days after settlement date.

[151] OEA has also estimated that approximately 4% of all securities that have options traded on them would be threshold securities.

[152] Industry participants could not produce a quantifiable estimate for the cost related to the "borrow or arrange to borrow" requirement for failing to close-out deliveries in threshold securities that remain open for ten days past the settlement date. Additionally, some industry participants provided inconsistent statements regarding the amount of securities for which a locate is given, compared to whether a short sale execution actually occurs. The estimated range is anywhere from 10% to 80%.

[153] As in former Rule 10a–2, these prohibitions do not apply to the loan of a security that occurs by way of a loan to another broker or dealer, or where an exchange or securities association finds, prior to the loan or fail, that the sale resulted from a good faith mistake, the broker-dealer exercised due diligence, and either that requiring a buy-in would result in undue hardship or that the sale had been effected at a permissible price.

price. The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces. The Rule is prophylactic, and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

Typically, follow-on offering prices are based on a stock's closing price prior to pricing, and thus short sales during the period immediately preceding pricing that reduce the market price can result in a lower offering price. Rule 105 does not prohibit pre-pricing short sales, but it does prevent short sellers from covering the short sales with offering shares. A trader who sells short pre-pricing because the trader knows or has a high degree of certainty that he or she will be able to obtain covering shares in the offering at a lower price does not assume the same market risk as a short seller who intends to cover with open market shares and is not engaged in an evaluation of the stock's "true value." This manipulative conduct can negatively impact the issuer, which receives reduced offering proceeds as a result of the lower offering price, and harms the market by inhibiting the capital raising process.

The adopted amendments to Rule 105 eliminate the shelf offering exception. At the time of adoption of the exception, the Commission viewed shelf offerings as uncommon and generally less susceptible to manipulation than non-shelf offerings.[154] Today, shelf offerings are common, and investors generally have notice of them before they occur because they are likely to utilize the same marketing efforts—road shows and other selling efforts—that are used with non-shelf offerings.

a. Benefits

Eliminating the shelf exception from Rule 105 will provide a number of important benefits to issuers, investors, and the market as a whole. The amendment updates Rule 105 by adopting a uniform standard for shelf and non-shelf offerings, which are much more similar today than when the exception was adopted because of changes in the way most shelf offerings are sold. Both shelf and non-shelf offerings are susceptible to the manipulation that Rule 105 is intended to prevent. In both cases, pre-pricing short sales that are covered with offering shares exert downward pressure on pricing that is not connected to any evaluation of the stock's future performance.

Elimination of the shelf exception will benefit issuers and investors by promoting shelf-offering prices that are based upon market prices that are not artificially influenced. This will safeguard the integrity of the capital raising process with respect to shelf offerings and enhance investor confidence in our markets. The amended rule will also protect issuers conducting shelf offerings from receiving reduced offering proceeds as a result of manipulative conduct.

b. Costs

We recognize that the amendments to Rule 105 may result in some costs to certain market participants. Eliminating the shelf exception may impair a short seller's ability to effect a covering transaction because there are fewer shares available with which one may cover. It may also impact traders and firms that derive significant revenue from covering pre-pricing shorts with shelf offering shares.

We anticipate these changes to Rule 105 may impose compliance costs, in the form of increased surveillance, on broker-dealers. However, we do not expect the change to result in a major increase in costs or prices for consumers or individual industries. Rather, the change will curtail the potential for manipulative activity that might otherwise create a temporary mispricing of securities and reduce offering proceeds. The change will provide a protective measure against abusive conduct that hampers the capital raising process and negatively impacts issuers.

Any costs associated with restricting a short sellers' ability to cover with offering shares is balanced by the benefits derived from preventing the manipulative activity of effecting pre-pricing short sales and covering with offering shares. Moreover, although the Commission recognizes that the amendments may diminish a short seller's ability to effect a covering transaction by restricting the sources from which he may cover, Rule 105 will continue to allow the beneficial effects of short selling to reach the market. Short selling in advance of a shelf offering will remain available to enhance pricing efficiency.

Lastly, the amendments to Rule 105 of Regulation M do not impose a ban on pre-pricing short sales. Rather, the amendments prohibit short sellers from covering the short sales with offering shares. The amendments will prevent a trader who sells short pre-pricing because the trader knows he or she will obtain offering shares to cover the short position at a lower price in order to generate a risk-free profit.

X. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[155] requires us, when engaging in rulemaking and where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[156] requires the Commission in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Proposing Release, we solicited comment on the proposals' effects on efficiency, competition, and capital formation. Additionally we requested, but did not receive, comments regarding the impact of the proposed amendments on the economy generally pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[157]

We have considered the proposed amendments in Regulation SHO in light of the standards of Section 23(a)(2) of the Exchange Act and believe the adopted amendments should not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. We note, however, that there are several areas in Regulation SHO where issuers may be treated differently.

First, in any pilot created pursuant to Rule 202T, the price test could be suspended for issuers selected, while the price test would continue to apply to issuers in the same industry that are not selected for the pilot. Some commenters expressed a concern about the pilot imposing costs on issuers selected, relative to possible manipulative short selling in the absence of price restrictions or pricing anomalies. These commenters also asserted that the pilot would create a confusing system that would slow trading, lead to errors, and confound market participants.

We believe that most of the more liquid securities that would be appropriate for a pilot are traded on exchanges or other organized markets

[154] Potential investors generally were not aware of a takedown until immediately prior to its occurrence, and thus their pre-pricing short sales were arguably non-manipulative.

[155] 15 U.S.C. 78c(f).

[156] 15 U.S.C. 78w(a)(2).

[157] Pub. L. 104–121, tit. II, 110 Stat. 857 (1996).

with high level of transparency and surveillance. The Commission and SROs would monitor trading behavior during the operation of any pilot and surveil for manipulative short selling activity. Furthermore, the general anti-fraud and anti-manipulation provisions of the federal securities laws will continue to apply to trading activity in these securities, thus prohibiting trading activity designed to improperly influence the price of a security.[158] Moreover, to the extent there are price and trading activity variations, this is precisely the empirical data that the Commission seeks to obtain and analyze as part of our assessment as to whether the price test should be removed, in part or whole, for the pilot securities or other securities.

By further order, the Commission can terminate or extend the period of the pilot as it determines necessary or appropriate in the public interest or to protect investors or to remove or add some or all securities selected for the pilot, any costs associated with manipulative short selling or price variations may be ameliorated through the termination of the pilot or removal of affected securities.

Secondly, the additional requirements of Rule 203(b)(3) will apply to any equity security of an issuer registered under Section 12 or required to file reports pursuant to Section 15 of the Exchange Act where, for five consecutive settlement days, there are fails to deliver at a registered clearing agency of 10,000 shares or more per security, and that is equal to at least one-half of one percent of the issue's total shares outstanding. The additional requirements will not apply to any issuers that are not registered under Section 12 or required to file reports pursuant to Section 15 of the Exchange Act, and are thus not required to provide ongoing public disclosure about the company, its actions, and its performance. As the calculation of the threshold that would trigger the requirements of Rule 203(b)(3) depends on identifying the aggregate fails to deliver as a percentage of the issuer's total shares outstanding, it is necessary to limit the requirement to companies that are subject to the reporting requirements of the Exchange Act.

XI. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act.[159] This FRFA relates to new Regulation SHO, adopted under the Exchange Act, which replaces Rules 3b–3 and 10a–2, and amends Rule 105 of Regulation M.

Rule 200 of Regulation SHO defines ownership of securities, specifies aggregation of long and short positions, and also includes the requirement that sales in all equity securities be marked "long," "short," or "short exempt." Regulation SHO includes a temporary rule, Rule 202T, that establishes procedures to allow the Commission to suspend the operation of the current "tick" test in Rule 10a–1, and any short sale price test for any exchange or national securities association, for specified securities. Rule 203 of Regulation SHO requires short sellers in all equity securities to locate securities to borrow before selling, and also imposes heightened delivery requirements on securities that have fails to deliver at a registered clearing agency of 10,000 shares or more per security, and that is equal to at least one-half of one percent of the issues total shares outstanding. The Commission is also adopting amendments to Rule 105 of Regulation M to remove the shelf offering exception.

A. Need for and Objectives of the Amendments

Regulation SHO and the amendments to Rule 105 of Regulation M are designed, in part, to fulfill several objectives, including: (1) Establish uniform locate and delivery requirements in order to address potentially abusive naked short selling and other problems associated with failures to deliver; (2) clarify marking requirements for short sales in all equity securities; (3) establish a procedure to temporarily suspend Commission and SRO short sale price tests in order to evaluate the overall effectiveness and necessity of such restrictions; and (4) prohibit certain short sales from being covered with securities obtained from shelf offerings.

Moreover, the rules are consistent with the objective of simplifying and modernizing short sale regulation, providing controls where they are most needed, and temporarily removing restrictions where they may be unnecessary. Rule 203(b) of Regulation SHO provides stronger locate and delivery requirements designed to address abusive naked short selling, *i.e.*, a security could only be sold short to the extent that there was stock available to borrow. Rule 203 is a targeted approach that incorporates the provisions of existing SRO rules while imposing additional restrictions where we believe appropriate to address naked short selling while protecting and enhancing the operation, integrity, and stability of the markets. As a part of this effort to improve locate and delivery requirements, Rule 200 clarifies marking requirements and thus clarifies when a participant must locate stocks for delivery. Rule 202T establishes procedures for the Commission to temporarily remove price restrictions for short sales from certain securities so that we can obtain empirical data on the impact of short selling in the absence of a price test and to assess whether a short sale price test should be removed, in part or in whole, for some or all securities.

The amendments to Rule 105 of Regulation M prohibit covering certain short sales with securities acquired in a shelf offering. The amendments are in response to the recognition that shelf offerings are much more common in today's markets and with increased transparency they are susceptible to the same potential for manipulation and abuse as non-shelf offerings. The elimination of the shelf offering exception in Rule 105 is designed to reduce the potential that pre-pricing short sales will exert downward price pressure on the market price of a shelf offering.

B. Significant Issues Raised by Public Comments

The Initial Regulatory Flexibility Analysis ("IRFA") appeared in the Proposing Release.[160] We requested comment in the IRFA on the impact the proposals would have on small entities and how to quantify the impact. We did not receive any comment letters addressing the IRFA; however, a few commenters discussed certain costs that would be incurred by small broker-dealers and issuers if some or all of the proposals in Regulation SHO were adopted.[161]

[158] *See, e.g.*, Securities Act Section 17(a), and Exchange Act Sections 9(a), 10(b), and 15(c) and Rules 10b–5 and 15c1–2 thereunder.

[159] 5 U.S.C. 603.

[160] *See* Proposing Release, Section XXII.

[161] For example, one commenter expressed concern about the Commission's proposal for firms to aggregate their positions in securities on a contemporaneous basis throughout the day. The commenter claimed such a requirement would require system changes for those broker-dealers who have not implemented the aggregation units, *i.e.*, smaller broker-dealers, and would be significantly expensive without the attenuating benefits. *See* letter from SIA. Also, other commenters were concerned about the impact of Regulation SHO on small issuers, claiming it would increase the cost of capital to them by imposing locate and delivery requirements in the absence of a hedging exemption. *See* letters from Saul Ewing and Feldman.

C. Small Entities Subject to the Amendments

Paragraph (c)(1) of Rule 0–10[162] states that the term "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and that is not affiliated with any person (other than a natural person) that is not a small business or small organization. In the IRFA of the Proposing Release, we estimated that as of 2002 there were approximately 880 broker dealers that qualified as small entities, as defined above. Presently, we estimate that as of 2003 there are approximately 906 broker-dealers that qualify as small entities, as defined above.

In the Proposing Release, we sought comment on the costs on small entities to modify, and in some cases install, systems and surveillance mechanisms to ensure compliance with the new rules, including implementing the pilot, marking, and locate and delivery requirements. No commenters responded with cost estimates pertaining to the requested data listed above. Nevertheless, we estimate the costs related to upgrades of systems and surveillance mechanisms will be minimal. Industry sources stated that most broker-dealers, including small broker-dealers, already have the necessary systems in place. Therefore, such entities will only be required to modify their systems for compliance.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Regulation SHO may impose some new compliance and marking requirements on broker-dealers that are small entities. Some small entities that trade securities that may be subject to the pilot program will have to make changes to exclude these securities from Commission and SRO price test restrictions. Moreover, small entities may have to make systems changes for additional marking requirements for short sales in listed securities, *i.e.*, adding a "short exempt" designation.[163]

We sought comment on the reporting, recordkeeping, and compliance costs on small entities with regard to, among other things, implementing the pilot and the marking requirements. We estimate that the greatest cost associated with such requirements is related to implementation time and training.

E. Agency Action To Minimize the Effect on Small Entities

As required by the Regulatory Flexibility Act, we have considered alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Several alternatives were considered but rejected, while other alternatives were taken into account in the adoption of Regulation SHO and the amendments to Rule 105 of Regulation M. The final rules and rule amendments meet the Commission's stated goals by applying short sale restrictions where they are most needed and easing them, on a temporary basis to obtain greater empirical data, where they may be unnecessary.

Regulation SHO and the amendments to Rule 105 of Regulation M should not adversely affect small entities because they impose minimal new reporting, record keeping or compliance requirements. Moreover, it is not appropriate to develop separate requirements for small entities with respect to Regulation SHO and the adopted amendments to Rule 105 of Regulation M, because we think all issuers, including issuers that are small entities, should be subject to short sale locate and delivery requirements, marking requirements, and the easing of restrictions on short sales subject of the pilot. As stated in the Proposing Release, we believe that it is beneficial to establish uniform standards specifying procedures for all short selling.

XII. Statutory Basis and Text of Adopted Amendments

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 9(h), 10, 11A, 15, 17(a), 17A, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78i(h), 78j, 78k–1, 78o, 78q(a), 78q–1, 78w(a), and 78mm, the Commission is adopting §§ 242.200, 242.202T, 242.203, along with amendments to Regulation M, Rule 105, and interpretative guidance set forth in part 241.

List of Subjects

17 CFR Parts 240 and 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 241

Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 240.3b–3 [Removed]

§ 240.10a–2 [Removed]

■ 2. Sections 240.3b–3 and 240.10a–2 are removed and reserved.

§ 240.10a–1 [Amended]

■ 3. Section 240.10a–1 is amended by:

■ a. Removing the authority citations following the section;

■ b. Removing and reserving paragraphs (c) and (d); and

■ c. Removing paragraph (e)(13).

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 4. Part 241 is amended by adding Release No. 34–50103 and the release date of July 28, 2004 to the list of interpretive releases.

PART 242—REGULATIONS M, SHO, ATS, AND AC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 5. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78g(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

■ 6. The part heading for part 242 is revised as set forth above.

§ 242.105 [Amended]

■ 7. Section 242.105, paragraph (b) is amended by removing the phrase "offerings filed under § 230.415 of this chapter or to".

■ 8. Part 242 is amended by adding a new subject heading and §§ 242.200 through 242.203 to read as follows:

[162] 17 CFR 240.0–10(c)(1).

[163] We believe this cost should be minimal because some self-regulatory organizations already either require or advise members to utilize the "short exempt" designation.

Regulation SHO—Regulation of Short Sales

Regulation SHO—Regulation of Short Sales

§ 242.200 Definition of "short sale" and marking requirements.

(a) The term *short sale* shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(b) A person shall be deemed to own a security if:

(1) The person or his agent has title to it; or

(2) The person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; or

(3) The person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or

(4) The person has an option to purchase or acquire it and has exercised such option; or

(5) The person has rights or warrants to subscribe to it and has exercised such rights or warrants; or

(6) The person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security.

(c) A person shall be deemed to own securities only to the extent that he has a net long position in such securities.

(d) A broker or dealer shall be deemed to own a security, even if it is not net long, if:

(1) The broker or dealer acquired that security while acting in the capacity of a block positioner; and

(2) If and to the extent that the broker or dealer's short position in the security is the subject of offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(e) A broker-dealer shall be deemed to own a security even if it is not net long, if:

(1) The broker-dealer is unwinding index arbitrage position involving a long basket of stock and one or more short index futures traded on a board of trade or one or more standardized options contracts as defined in 17 CFR 240.9b√1(a)(4); and

(2) If and to the extent that the broker-dealer's short position in the security is the subject of offsetting positions created and maintained in the course of bona-fide arbitrage, risk arbitrage, or bona fide hedge activities; and

(3) The sale does not occur during a period commencing at the time that the Dow Jones Industrial Average has declined by two percent or more from its closing value on the previous day and terminating upon the establishment of the closing value of the Dow Jones Industrial Average on the next succeeding trading day.

(f) In order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position. Independent trading unit aggregation is available only if:

(1) The broker or dealer has a written plan of organization that identifies each aggregation unit, specifies its trading objective(s), and supports its independent identity;

(2) Each aggregation unit within the firm determines, at the time of each sale, its net position for every security that it trades;

(3) All traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit; and

(4) Individual traders are assigned to only one aggregation unit at any time.

(g) A broker or dealer must mark all sell orders of any equity security as "long," "short," or "short exempt."

(1) An order to sell shall be marked "long" only if the seller is deemed to own the security being sold pursuant to paragraphs (a) through (f) of this section and either:

(i) The security to be delivered is in the physical possession or control of the broker or dealer; or

(ii) It is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.

(2) A short sale order shall be marked "short exempt" if the seller is relying on an exception from the tick test of 17 CFR 240.10a–1, or any short sale price test of any exchange or national securities association.

(h) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities, or to any person or class of persons.

§ 242.201 Price test [Reserved].

§ 242.202T Temporary short sale rule suspension.

(a) The provisions of 17 CFR 240.10a–1(a) and any short sale price test for any exchange or national securities association shall not apply to short sales in such securities, or during such time periods, as the Commission designates by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving due consideration to the security's liquidity, volatility, market depth and trading market. All other provisions of 17 CFR 240.10a–1, § 242.200, and § 242.203 shall remain in effect.

(b) No self-regulatory organization shall have a rule that is not in conformity with or conflicts with any order issued pursuant to paragraph (a) of this section.

(c) This temporary section will expire on August 6, 2007.

§ 242.203 Borrowing and delivery requirements.

(a) *Long sales.* (1) If a broker or dealer knows or has reasonable grounds to believe that the sale of an equity security was or will be effected pursuant to an order marked "long," such broker or dealer shall not lend or arrange for the loan of any security for delivery to the purchaser's broker after the sale, or fail to deliver a security on the date delivery is due.

(2) The provisions of paragraph (a)(1) of this section shall not apply:

(i) To the loan of any security by a broker or dealer through the medium of a loan to another broker or dealer;

(ii) If the broker or dealer knows, or has been reasonably informed by the seller, that the seller owns the security, and that the seller would deliver the security to the broker or dealer prior to the scheduled settlement of the transaction, but the seller failed to do so; or

(iii) If, prior to any loan or arrangement to loan any security for delivery, or failure to deliver, a national securities exchange, in the case of a sale effected thereon, or a national securities association, in the case of a sale not effected on an exchange, finds:

(A) That such sale resulted from a mistake made in good faith;

(B) That due diligence was used to ascertain that the circumstances specified in § 242.200(g) existed; and

(C) Either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a "purchase for cash" or that the mistake was made by the seller's broker and the sale was at a permissible price under any applicable short sale price test.

(b) *Short sales.* (1) A broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has:

(i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or

(ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and

(iii) Documented compliance with this paragraph (b)(1).

(2) The provisions of paragraph (b)(1) of this section shall not apply to:

(i) A broker or dealer that has accepted a short sale order from another registered broker or dealer that is required to comply with paragraph (b)(1) of this section, unless the broker or dealer relying on this exception contractually undertook responsibility for compliance with paragraph (b)(1) of this section;

(ii) Any sale of a security that a person is deemed to own pursuant to § 242.200, provided that the broker or dealer has been reasonably informed that the person intends to deliver such security as soon as all restrictions on delivery have been removed. If the person has not delivered such security within 35 days after the trade date, the broker-dealer that effected the sale must borrow securities or close out the short position by purchasing securities of like kind and quantity;

(iii) Short sales effected by a market maker in connection with bona-fide market making activities in the security for which this exception is claimed; and

(iv) Transactions in security futures.

(3) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a threshold security for thirteen consecutive settlement days, the participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity:

(i) The provisions of this paragraph (b)(3) shall not apply to the amount of the fail to deliver position that the participant of a registered clearing agency had at a registered clearing agency on the settlement day immediately preceding the day that the security became a threshold security; provided, however, that if the fail to deliver position at the clearing agency is subsequently reduced below the fail to deliver position on the settlement day immediately preceding the day that the security became a threshold security, then the fail to deliver position excepted by this paragraph (b)(3)(i) shall be the lesser amount;

(ii) The provisions of this paragraph (b)(3) shall not apply to the amount of the fail to deliver position in the threshold security that is attributed to short sales by a registered options market maker, if and to the extent that the short sales are effected by the registered options market maker to establish or maintain a hedge on options positions that were created before the security became a threshold security;

(iii) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a threshold security for thirteen consecutive settlement days, the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity;

(iv) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker or dealer's short position, then the provisions of this paragraph (b)(3) relating to such fail to deliver position shall apply to the portion of such registered broker or dealer that was allocated the fail to deliver position, and not to the participant; and

(v) A participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of this paragraph (b)(3) where the participant enters into an arrangement with another person to purchase securities as required by this paragraph (b)(3), and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase.

(c) *Definitions.* (1) For purposes of this section, the term *market maker* has the same meaning as in section 3(a)(38) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78c(a)(38)).

(2) For purposes of this section, the term *participant* has the same meaning as in section 3(a)(24) of the Exchange Act (15 U.S.C. 78c(a)(24)).

(3) For purposes of this section, the term *registered clearing agency* means a clearing agency, as defined in section 3(a)(23)(A) of the Exchange Act (15 U.S.C. 78c(a)(23)(A)), that is registered with the Commission pursuant to section 17A of the Exchange Act (15 U.S.C. 78q–1).

(4) For purposes of this section, the term *security future* has the same meaning as in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(5) For purposes of this section, the term *settlement day* means any business day on which deliveries of securities and payments of money may be made through the facilities of a registered clearing agency.

(6) For purposes of this section, the term *threshold security* means any equity security of an issuer that is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or for which the issuer is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78o(d)):

(i) For which there is an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency of 10,000 shares or more, and that is equal to at least 0.5% of the issue's total shares outstanding;

(ii) Is included on a list disseminated to its members by a self-regulatory organization; and

(iii) *Provided, however,* that a security shall cease to be a threshold security if the aggregate fail to deliver position at a registered clearing agency does not exceed the level specified in paragraph (c)(6)(i) of this section for five consecutive settlement days.

(d) *Exemptive authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities, or to any person or class of persons.

By the Commission.

Dated: July 28, 2004.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 50104/July 28, 2004]

Securities Exchange Act of 1934; Order Suspending the Operation of Short Sale Price Provisions for Designated Securities and Time Periods

The Securities and Exchange Commission ("Commission"), by this Order, is establishing a Pilot ("Pilot") suspending the provisions of Rule 10a–1(a) under the Securities Exchange Act of 1934 (the "Act")[1] and any short sale price test of any exchange or national securities association for: (1) Short sales[2] in the stocks identified in Appendix A to this Order; (2) short sales in any security included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the consolidated tape[3] on the following day; and (3) short sales in any security not included in paragraphs (1) and (2) above effected in the period between the close of the consolidated tape and the open of the consolidated tape the following day. The Commission is establishing this Pilot for a one-year period commencing on January 3, 2005. The Commission may issue subsequent orders that affect the operation of the Pilot. The Commission finds that the Pilot is necessary and appropriate in the public interest and consistent with the protection of investors.[4]

I. Short Selling In Designated Securities

During the term of the Pilot, all short selling in the securities identified in Appendix A to this Order shall be effected without regard to the provisions of Rule 10a–1(a) and any short sale price test of any exchange or national securities association. As discussed below, the Commission has selected a subset of stocks from the Russell 3000 index for inclusion in the Pilot, after giving due consideration to the liquidity, volatility, market depth and trading market of these securities.

A pilot that includes a subset of securities from the Russell 3000 provides a balanced and targeted approach to assessing the efficacy of a price test for short sales for a broad range of securities. The average daily dollar volume for the securities in the Russell 3000 index in 2003 was $22.9 million dollars.

We selected the securities to be included in the Pilot by first excluding the 32 securities in the Russell 3000 index as of June 25, 2004 that are not Nasdaq national market securities ("NNM"), listed on the American Stock Exchange ("Amex"), or listed on the New York Stock Exchange ("NYSE") because short sales in these securities are currently not subject to a price test. We also excluded issuers whose initial public offerings commenced after April 30, 2004.[5] We then sorted the remaining securities into three groups—Amex, Nasdaq NNM and NYSE—and ranked the securities in each group by average daily dollar volume over the one year prior to the issuance of this order from highest to lowest for the period.[6] In each group, we then selected every third stock from the remaining stocks.[7]

The Pilot stocks consist of 50% NYSE listed securities, 2.2% Amex listed securities, and 47.8% Nasdaq NNM securities. The Pilot stocks include stocks that have associated options trading on a registered options exchange or Nasdaq (63.7% of Pilot stocks) and associated securities futures (2.8% of Pilot stocks).[8]

The Pilot includes securities with varying levels of liquidity, which will enable us to examine whether the absence of a short sale price test affects less liquid and more liquid securities differently. We do not believe that there is sufficient volatility in these securities so as to make them inappropriate for inclusion in the Pilot. In addition, these securities have significant market depth, and are traded on exchanges or other organized markets with high levels of transparency and surveillance, which will enhance the ability of the Commission and self-regulatory organizations ("SROs") to monitor trading behavior during the Pilot and surveil for manipulative short selling.

The remaining stocks in the Russell 3000 index will function as the control group.[9] The securities in the control group are similar to the stocks in the Pilot group in terms of the percentage of NYSE, Amex, and Nasdaq securities, as well as securities for which there are associated options and single stock futures.[10]

We are establishing the Pilot as part of the Commission's review of short sale regulation.[11] The Pilot is in the public interest because it will assist us in assessing whether changes to short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation.[12] The Pilot will enable us to obtain empirical data to help assess whether short sale regulation should be removed, in part or in whole, for actively-traded securities, or if retained, should be applied to additional securities. The Pilot will allow us to study trading behavior in the absence of a short sale price test on the stocks selected by comparing the trading behavior of the control group stocks to that of the Pilot stocks through empirical analysis. We will examine, among other things, the impact of price tests on market quality (including volatility and liquidity), whether any price changes are caused by short selling, costs imposed by a price test, and the use of alternative means to establish short positions.

We do not believe that any variations in prices and trading activity between the Pilot stocks and similar securities not subject to the price test will be problematic. The risk of any adverse impact on the Pilot securities is expected to be small, particularly relative to the benefits of obtaining empirical data regarding trading behavior in the absence of a short sale price test.[13] A large number of Pilot

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[1] 17 CFR 240.10a–1.

[2] "Short sale" is defined in Rule 200 of Regulation SHO, 17 CFR 242.200.

[3] The term "consolidated tape" refers to the effective transaction reporting plan of the Consolidated Tape Association.

[4] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the Pilot's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] Similarly, we excluded spin-offs commencing after April 30, 2004.

[6] Securities selected for inclusion in the Pilot will remain in the Pilot even if during the term of the Pilot they cease being included in the Russell 3000 index.

[7] In each group, we started our selection with the second stock in order to have a more representative daily dollar volume sample. The most representative stock in a group of three stocks ranked by volume would be the middle stock. Thus, to select the most representative sample for the pilot, we would select the second stock of every three stocks; in other words, every third stock starting with the second.

[8] The percentage of the stocks selected for the Pilot that are NYSE or Amex listed, or Nasdaq NNM, or for which there are associated options or securities futures, are representational of the Russell 3000 index as a whole. Specifically, the Russell 3000 index is composed of 49.9% NYSE listed securities, 2.2% Amex listed securities, 47.9% Nasdaq NNM securities, 63% with associated options, and 3.4% with associated single stock futures.

[9] Like the group of pilot stocks, the control group will exclude any securities as to which there is currently no price test (*i.e.*, securities that are not exchange-listed or Nasdaq NNM).

[10] Specifically, the control group is composed of 49.9% NYSE listed securities, 2.2% Amex listed securities, 47.9% Nasdaq securities, 62.7% with associated options, and 3.7% with associated single stock futures.

[11] *See* Securities Exchange Act Release No. 50103 (July 28, 2004) ("Adopting Release").

[12] Adopting Release.

[13] The general anti-fraud and anti-manipulation provisions of the federal securities laws will continue to apply to trading in these securities, thus prohibiting trading activity designed to improperly influence the price of a security. *See, e.g.*, Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a), and Sections 9(a), 10(b), and 15(c) of the Act, 15

stocks are actively traded, and as we have previously stated, we believe that actively traded securities are less susceptible to manipulation.[14] In addition, the Commission and the SROs will monitor trading activity during the Pilot and surveil for manipulative short selling.

We believe that a one-year Pilot will allow the Commission sufficient time to gather and analyze data necessary to reach conclusions regarding trading behavior in the absence of short sale price restrictions. The Commission, however, may, by further order, terminate, extend the period of, or modify the Pilot as it determines necessary or appropriate in the public interest or for the protection of investors. In addition, the Pilot will suspend only the operation of short sale price tests. All other short sale rules, including the other provisions of Rule 10a–1,[15] the marking, locate and delivery requirements adopted under Regulation SHO,[16] and applicable SRO rules, will remain in effect.

II. Short Selling During After-Hours Trading

During the Pilot, short sales: (1) In any security included in the Russell 1000 index effected after 4:15 p.m. e.s.t. and the open of the consolidated tape on the following day; and (2) in any security not included either in paragraph (1) or in the designated securities described in Section I above effected between the close of the consolidated tape and the open of the consolidated tape on the following day, shall be effected without regard to the provisions of Rule 10a–1(a) and any short sale price test of any exchange or national securities association.

Securities in the Russell 1000 index are appropriate for inclusion in a Pilot examining short sales between 4:15 p.m. and the close of the consolidated tape.[17] The Russell 1000 index represents a broad range of securities; it comprises 1,000 of the largest companies in the Russell 3000 index (approximately 92% of the total market capitalization of the Russell 3000 index).[18] Although there is limited trading volume in these securities after 4:15 p.m., we believe the liquidity is sufficient to allow us to examine the impact of removing short sale price tests.

Moreover, we believe securities in the Russell 1000 index are less susceptible to manipulative short selling in the absence of a price test after 4:15 p.m. than securities of issuers with a lower market capitalization. A subset of the Russell 3000, the Russell 1000 securities generally trade on exchanges or other organized market centers, and we believe that as a result, the investment community widely follows Russell 1000 index securities. Any aberrations in price are likely to be observed and addressed quickly. In addition, while after-hours trading has grown in recent years, the volume is relatively small compared to the volume of trading occurring during regular trading hours when liquidity is greatest and prices reflect active market interest.[19] Thus, the impact of any manipulative short selling after hours would be less than the effect of such activity during regular market hours because after-hours prices are not widely viewed as indicative of normal market prices. Further, we do not believe that there is sufficient volatility in these securities after hours so as to make them inappropriate for inclusion in the Pilot. The lack of significant market depth in these securities after hours will allow us to examine what effect, if any, removing a short sale price test has where information on buy and sell orders is not as readily available.

This portion of the Pilot will allow us to examine whether removing a price test after the close of regular trading in securities included in the Russell 1000 index would benefit investors and the markets by increasing liquidity and pricing efficiency in these securities in the after-hours market. We will also be able to study whether the absence of a short sale price test enhances a broker-dealer's ability to facilitate customer orders in a security at a specific reference price, such as the closing price or volume weighted average price, that are often executed in the after-market.

For these reasons, we believe that it is appropriate that the Pilot include the suspension of all price tests for all securities included in the Russell 1000 index for short sales effected between 4:15 p.m. and the open of the consolidated tape the following day.[20]

We are also removing the price tests during the one-year Pilot period for short sales in any other security effected when the consolidated tape is not operating. This portion of the Pilot is important because it will allow us to study the effect of removal of a price test on a broader segment of the market than the other parts of the Pilot while the consolidated tape is not operating. It will also allow us to study whether, and to what extent, removal of the price test after hours will affect regular trading in the security on the following day. Moreover, we do not believe this portion of the Pilot will pose any threat to liquidity or increase volatility in these securities after-hours. Historically, the Commission has found that there is little evidence that significant trading activity occurs when the consolidated tape is not operating,[21] and there is little transparency or market depth. Nevertheless, the Commission and the SROs will monitor the trading and our analysis of data obtained from the Pilot will also focus on the impact of after-hours short selling.

III. Conclusion

The Commission finds that establishing the Pilot for the reasons stated above is necessary and appropriate in the public interest and consistent with the protection of investors. The Pilot will allow the Commission to obtain empirical data and study the effects of short selling in the absence of price test restrictions.

Accordingly,

A. It is hereby ordered that the suspension of the short sale price tests described below in Paragraph B shall commence on January 3, 2005, and shall terminate on December 31, 2005. The Commission from time to time may issue further orders affecting the operation of this Order.

U.S.C. 78i(a), 78j(b) and 78o(c), and Rules 10b–5 and 15c1–2 thereunder, 17 CFR 240.10b–5 and 240.15c1–2. Moreover, the Commission expects that SROs will actively monitor trading in the Pilot securities to identify any improper or abusive short selling during the course of the Pilot.

[14] *See* Securities Exchange Act Release No. 38067, 62 FR 520 (Jan. 3, 1997) (adopting anti-manipulation rules including an exception to the rules for trading activity in securities with high average daily trading volume ("ADTV")).

[15] 17 CFR 240.10a–1.

[16] 17 CFR 242.200, 242.203.

[17] Regular trading-hours are between 9:30 a.m. and 4:00 p.m. e.s.t. *See Electronic Communication Networks and After-Hours Trading Report* by the Division of Market Regulation, June 2000, at 4. However, trade reporting can be delayed and continue past 4:00 p.m. Therefore, for purposes of the Pilot we have set 4:15 p.m. as the end of regular trading activity.

[18] Securities selected for inclusion in this portion of the after-hours Pilot will remain in the Pilot even if during the term of the Pilot they cease being included in the Russell 1000 index.

[19] For example, based on a sample of a trading day in January of 2000, only 3% of the share volume in NYSE-listed securities was effected after 4 p.m. Similarly, share volume from post-4:00 p.m. trades in Nasdaq securities for the same date accounted for only 3% of the daily total. A vast majority of this after-hours trading volume in both markets was effected shortly after the regular session closed through market structured after-market execution opportunities, *i.e.*, crossing-sessions. *Electronic Communication Networks and After-Hours Trading Report* at 12–13.

[20] The consolidated tape operates from 8 a.m. to 8 p.m. e.s.t. *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225, 55227 (November 1, 2001). The NASD's short sale rule, Rule 3350, is currently not applicable beyond traditional market hours (9:30 a.m. to 4 p.m. Eastern Time). *See* NASD Notice to Members 94–68.

[21] *Electronic Communication Networks and After-Hours Trading Report* at 13.

B. It is further ordered that the provisions of Rule 10a–1(a) and any short sale price test of any exchange or national securities association are suspended with respect to:

(1) Short sales in the securities set forth in Appendix A to this Order;

(2) Short sales in any security included in the Russell 1000 index effected between 4:15 p.m. e.s.t. and the open of the consolidated tape on the following day; and

(3) Short sales in any security not included in paragraphs (1) and (2) above effected between the close of the consolidated tape and the open of the consolidated tape on the following day.

All other provisions of Rule 10a–1 shall remain in effect.

C. It is further ordered that no self-regulatory organization shall have a rule that is not in conformity with or conflicts with the provisions of Paragraph B. All other provisions of the rules of any self-regulatory organization shall remain in effect.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

Appendix A

The following securities are subject to this Order:

Ticker symbol	Company name
A	AGILENT TECHNOLOGIES INC
AAI	AIRTRAN HOLDINGS INC
AAON ...	AAON INC
ABC	AMERISOURCEBERGEN CORP
ABCO ...	ADVISORY BOARD CO
ABCW ..	ANCHOR BANCORP INC
ABGX ...	ABGENIX INC
ABK	AMBAC FINANCIAL GRP INC
ABMD ...	ABIOMED INC
ABR	ARBOR REALTY TRUST INC
ABRX ...	ABLE LABORATORIES INC
ABT	ABBOTT LABORATORIES
ACAI	ATLANTIC COAST AIRLINES
ACAP ...	AMERICAN PHYSICIANS CAP
ACMR ..	A C MOORE ARTS & CRAFTS
ACTI	ACTIVCARD CORP
ACV	ALBERTO CULVER CO
AD	ADVO INC
ADIC	ADVANCED DIGITAL INFO
ADLR ...	ADOLOR CORP
ADVNB	ADVANTA CORP
AEIS	ADVANCED ENERGY INDS INC
AES	AES CORP
AF	ASTORIA FINANCIAL CORP
AFC	ALLMERICA FINANCIAL CORP
AFCO ...	APPLIED FILMS CORP
AFFX	AFFYMETRIX INC
AFR	AMERICAN FINANCIAL RLTY
AGE	EDWARDS AG INC
AGII	ARGONAUT GROUP INC
AGN	ALLERGAN INC
AGP	AMERIGROUP CORP
AGR.B ..	AGERE SYSTEMS INC
AGYS ...	AGILYSYS INC
AHC	AMERADA HESS CORP
AHG	APRIA HEALTHCARE GROUP
AHR	ANTHRACITE CAPITAL INC
AHS	AMN HEALTHCARE SERVICES
AINV	APOLLO INVESTMENT CORP
AIQ	ALLIANCE IMAGING INC
AKAM ...	AKAMAI TECHNOLOGIES
ALD	ALLIED CAPITAL CORP
ALEX	ALEXANDER & BALDWIN INC
ALGN ...	ALIGN TECHNOLOGY INC
ALKS	ALKERMES INC
ALL	ALLSTATE CORP
ALOG ...	ANALOGIC CORP
ALSC	ALLIANCE SEMICONDUCTOR
ALX	ALEXANDERS INC
AMD	ADVANCED MICRO DEVICES
AMED ...	AMEDISYS INC
AML	AMLI RESIDENTIAL PPTYS
AMMD ..	AMERICAN MEDICAL SYSTEMS
AMRI	ALBANY MOLECULAR RESRCH
AMTD ...	AMERITRADE HOLDING CORP
ANDW ..	ANDREW CORP
ANEN ...	ANAREN INC
ANH	ANWORTH MORTGAGE ASSET
ANSI	ADVANCED NEUROMODULATION
ANSR ...	ANSWERTHINK INC
ANSS ...	ANSYS INC
AOS	SMITH A O CORP
AOT	APOGENT TECHNOLOGIES
APC	ANADARKO PETROLEUM CORP
APCC ...	AMERICAN PWR CONVERSION
APH	AMPHENOL CORP
APOG ...	APOGEE ENTERPRISES INC
APOL ...	APOLLO GROUP INC
APPB ...	APPLEBEES INTERNATIONAL
APPX ...	AMERICAN PHARMA PARTNERS
APSG ...	APPLIED SIGNAL TECH
ARE	ALEXANDRIA REAL ESTATE
ARTC ...	ARTHROCARE CORP
ARW	ARROW ELECTRONICS INC
ARXX ...	AEROFLEX INC
ASBC ...	ASSOCIATED BANC CORP
ASCA ...	AMERISTAR CASINOS INC
ASGR ...	AMERICA SERVICE GROUP
ASKJ	ASK JEEVES INC
ASTE	ASTEC INDUSTRIES INC
ATAC ...	AFTERMARKET TECHNOLOGY
ATG	AGL RESOURCES INC
ATI	ALLEGHENY TECHNOLOGIES
ATK	ALLIANT TECHSYSTEMS
ATMI	ATMI INC
ATML ...	ATMEL CORP
ATN	ACTION PERFORMANCE COS
ATR	APTARGROUP INC
ATRX ...	ATRIX LABS INC
AUGT ...	AUGUST TECHNOLOGY CORP
AV	AVAYA INC
AVID	AVID TECHNOLOGY INC
AVTR ...	AVATAR HOLDINGS INC
AVX	AVX CORP
AVY	AVERY DENNISON CORP
AWBC ..	AMERICANWEST BANCORP
AWE	AT&T WIRELESS SERVICES
AWR	AMERICAN STATES WATER CO
AXE	ANIXTER INTERNATIONAL
AYI	ACUITY BRANDS INC
AZR	AZTAR CORP
B	BARNES GROUP INC
BBA	BOMBAY CO INC
BBOX ...	BLACK BOX CORP
BBT	BB&T CORP
BC	BRUNSWICK CORP
BCSI	BLUE COAT SYSTEMS INC
BDG	BANDAG INC
BDN	BRANDYWINE REALTY TRUST
BEAS ...	BEA SYSTEMS INC
BEAV ...	BE AEROSPACE INC
BEBE ...	BEBE STORES INC
BEC	BECKMAN COULTER INC
BEN	FRANKLIN RESOURCES INC
BF.B	BROWN FORMAN CORP
BFS	SAUL CENTERS INC
BGFV ...	BIG 5 SPORTING GOODS
BGP	BORDERS GROUP INC
BHS	BROOKFIELD HOMES CORP
BIIB	BIOGEN IDEC INC
BIO	BIO-RAD LABORATORIES INC
BIOV	BIOVERIS CORPORATION
BJ	BJS WHOLESALE CLUB INC
BLC	BELO CORP
BLS	BELLSOUTH CORP
BMC	BMC SOFTWARE INC
BNI	BURLINGTON NORTHERN
BOBE ...	BOB EVANS FARMS INC
BPOP ...	POPULAR INC
BR	BURLINGTON RESOURCES INC
BRCD ...	BROCADE COMMUNICATIONS
BRCM ..	BROADCOM CORP
BRL	BARR PHARMACEUTICALS IN
BRO	BROWN & BROWN INC
BRW	BRISTOL WEST HLDGS INC
BRY	BERRY PETROLEUM CO
BSBN ...	BSB BANCORP
BSC	BEAR STEARNS COS INC
BSTE	BIOSITE INC
BSX	BOSTON SCIENTIFIC CO
BTRX ...	BARRIER THERAPEUTICS INC
BWS	BROWN SHOE INC
BXS	BANCORPSOUTH INC
BYD	BOYD GAMING CORP
CAC	CAMDEN NATIONAL CORP
CACH ...	CACHE INC
CAH	CARDINAL HEALTH INC
CAI	CACI INTERNATIONAL INC
CAKE ...	CHEESECAKE FACTORY INC
CAL	CONTINENTAL AIRLINES INC
CALM ...	CAL MAINE FOODS INC
CAM	COOPER CAMERON CORP
CAMD ..	CALIFORNIA MICRO DEVICES
CARS ...	CAPITAL AUTOMOTIVE REIT
CASY ...	CASEYS GENERAL STORES
CATY ...	CATHAY GENERAL BANCORP
CB	CHUBB CORP
CBB	CINCINNATI BELL INC
CBSH ...	COMMERCE BANCSHARES INC
CBSS ...	COMPASS BANCSHARES INC
CBT	CABOT CORP
CBU	COMMUNITY BANK SYSTEMS
CCCG ..	CCC INFORMATION SVCS
CCE	COCA COLA ENTERPRISE
CCRN ...	CROSS COUNTRY HEALTHCARE
CCRT ...	COMPUCREDIT CORP
CCU	CLEAR CHANNEL COMM INC
CDE	COEUR D ALENE MINES CORP
CDI	CDI CORP
CDIS	CAL DIVE INTERNATIONAL
CDT	CABLE DESIGN TECHNOLOGY
CEG	CONSTELLATION ENERGY GRP
CENT ...	CENTRAL GARDEN & PET CO
CERN ...	CERNER CORP
CEY	CERTEGY INC
CFBX ...	COMMUNITY FIRST BANK
CFC	COUNTRYWIDE FINANCIAL
CG	LOEWS CORP—CAROLINA GR
CGC	CASCADE NATURAL GAS CORP

Ticker symbol	Company name
CGX	CONSOLIDATED GRAPHIC
CHCO ..	CITY HOLDING CO
CHE	CHEMED CORPORATION
CHFC ...	CHEMICAL FINANCIAL CORP
CHH	CHOICE HOTELS INTL INC
CHK	CHESAPEAKE ENERGY CORP
CHRD ...	CHORDIANT SOFTWARE INC
CHRS ...	CHARMING SHOPPES INC
CHTT ...	CHATTEM INC
CHUX ...	O CHARLEYS INC
CI	CIGNA CORP
CIA	CITIZENS INC
CIMA	CIMA LABS INC
CK	CROMPTON CORP
CKEC ...	CARMIKE CINEMAS INC
CKFR ...	CHECKFREE CORP
CKH	SEACOR HOLDINGS INC
CKR	CKE RESTAURANTS INC
CL	COLGATE PALMOLIVE CO
CLE	CLAIRES STORES INC
CLFC	CENTER FINANCIAL CORP
CLRS ...	CLARUS CORP
CLSR ...	CLOSURE MEDICAL CORP
CLZR	CANDELA CORP
CMLS ...	CUMULUS MEDIA INC
CMPC ..	COMPUCOM SYSTEMS INC
CMS	CMS ENERGY CORP
CMTL ...	COMTECH TELECOMM
CMTY ...	COMMUNITY BANKS INC
CNA	CNA FINANCIAL CORP
CNB	COLONIAL BANCGROUP INC
CNMD ..	CONMED CORP
CNT	CENTERPOINT PPTYS TRUST
COCO ..	CORINTHIAN COLLEGES INC
COKE ...	COCA COLA BOTTLING
COLB ...	COLUMBIA BKG SYSTEM INC
COO	COOPER COMPANIES INC
COP	CONOCOPHILLIPS
CORI	CORILLIAN CORP
COSI	COSI INC
COST ...	COSTCO WHOLESALE CORP
CPB	CAMPBELL SOUP CO
CPHD ...	CEPHEID INC
CPKI	CALIFORNIA PIZZA KITCHEN
CPRT ...	COPART INC
CPS	CHOICEPOINT INC
CPWM ..	COST PLUS INC
CRA	APPLERA CORP CELERA
CRD.B ..	CRAWFORD & CO
CRN	CORNELL COMPANIES INC
CRS	CARPENTER TECHNOLOGY
CRWN ..	CROWN MEDIA HOLDINGS INC
CSC	COMPUTER SCIENCES CORP
CSE	CAPITALSOURCE INC
CSS	CSS INDUSTRIES INC
CSTR ...	COINSTAR INC
CSX	CSX CORP
CTB	COOPER TIRE & RUBBER CO
CTBI	COMMUNITY TRUST BANCORP
CTCO ...	COMMONWEALTH TEL ENT
CTIC	CELL THERAPEUTICS INC
CTL	CENTURYTEL INC
CTO	CONSOLIDATED TOMOKA LAND
CTR	CATO CORP
CTS	CTS CORP
CTSH ...	COGNIZANT TECH SOLUTIONS
CTXS ...	CITRIX SYSTEMS INC
CUB	CUBIC CORP
CUNO ..	CUNO INC
CUZ	COUSINS PROPERTIES INC
CV	CENTRAL VERMONT PUB SVC
CVTX ...	CV THERAPEUTICS INC
CYPB ...	CYPRESS BIOSCIENCES INC
CYTK ...	CYTOKINETICS INC
DAR	DARLING INTERNATIONAL
DBRN ...	DRESS BARN INC
DCI	DONALDSON INC
DCLK ...	DOUBLECLICK INC
DCN	DANA CORP
DDIC	DDI CORP
DDS	DILLARDS INC
DECK ...	DECKERS OUTDOOR CORP
DGII	DIGI INTL INC
DGIN	DIGITAL INSIGHT CORP
DHC	DANIELSON HOLDING CORP
DIS	DISNEY WALT CO
DJO	DJ ORTHOPEDICS INC
DKS	DICKS SPORTING GOODS INC
DLTR	DOLLAR TREE STORES INC
DMRC ..	DIGIMARC CORP
DOV	DOVER CORP
DOVP ...	DOV PHARMACEUTICAL INC
DP	DIAGNOSTIC PRODUCTS CORP
DPMI	DUPONT PHOTOMASKS INC
DPTR ...	DELTA PETROLEUM CORP
DRE	DUKE REALTY CORP
DRXR ...	DREXLER TECHNOLOGY CORP
DSS	QUANTUM CORP
DTAS ...	DIGITAS INC
DTPI	DIAMONDCLUSTER INTL INC
DTSI	DIGITAL THEATRE SYSTEMS
DUSA ...	DUSA PHARMACEUTICALS INC
DV	DEVRY INC
DVD	DOVER MOTORSPORTS INC
EAC	ENCORE ACQUISITION CO
EAS	ENERGY EAST CORP
EASI	ENGINEERED SUPPORT SYS
EBAY ...	EBAY INC
EBF	ENNIS BUSINESS FORMS INC
ECLG ...	ECOLLEGE COM
ECSI	ENDOCARDIAL SOLUTIONS
ED	CONSOLIDATED EDISON INC
EDLG ...	EDUCATION LENDING GROUP
EDS	ELECTRONIC DATA SYSTEMS
EFD	EFUNDS CORP
EFII	ELECTRONICS FOR IMAGING
EFX	EQUIFAX INC
EGN	ENERGEN CORP
EGOV ...	NIC INC
EIX	EDISON INTERNATIONAL
EL	ESTEE LAUDER COMPANIES
ELNK	EARTHLINK INC
ELON ...	ECHELON CORP
ELY	CALLAWAY GOLF CO
EMC	E M C CORP
ENDP ...	ENDO PHARMACEUTICALS
ENMC ..	ENCORE MEDICAL CORP
ENTG ...	ENTEGRIS INC
ENZ	ENZO BIOCHEM INC
EOG	EOG RESOURCES INC
EOP	EQUITY OFFICE PPTYS TR
EPAX ...	AMBASSADORS GROUP INC
EPEX ...	EDGE PETROLEUM CORP
EPIC	EPICOR SOFTWARE CORP
EPIX	EPIX MEDICAL INC
EQR	EQUITY RESIDENTIAL
EQT	EQUITABLE RESOURCES INC
ERES ...	ERESEARCHTECHNOLOGY INC
ESCA ...	ESCALADE INC
ESIO	ELECTRO SCIENTIFIC INDS
ESL	ESTERLINE TECHNOLOGIES
ESPD ...	ESPEED INC
ESS	ESSEX PROPERTY TRUST INC
ESST	ESS TECHNOLOGY INC
ESV	ENSCO INTERNATIONAL INC
ET	E TRADE FINANCIAL CORP
ETM	ENTERCOM COMMUNICATIONS
ETR	ENTERGY CORP
EV	EATON VANCE CORP
EXLT	EXULT INC
EYET	EYETECH PHARMACEUTICALS
FAC	FIRST ACCEPTANCE CORP
FADV ...	FIRST ADVANTAGE CORP
FBC	FLAGSTAR BANCORP INC
FBTX	FRANKLIN BANK CORP
FCE.A ..	FOREST CITY ENTRPRS
FCH	FELCOR LODGING TRUST INC
FCNCA	FIRST CITIZENS BANCSHRS
FCX	FREEPORT-MCMORAN C&G
FD	FEDERATED DEPT STORE
FDS	FACTSET RESEARCH SYSTEMS
FFFL	FIDELITY BANKSHARES INC
FFIN	FIRST FINL BANKSHARES
FIC	FAIR ISAAC CORP
FIF	FINANCIAL FED CORP
FINL	FINISH LINE INC
FISI	FINANCIAL INSTNS INC
FL	FOOT LOCKER INC
FLB	FIRST NATL BANKSHARES
FLO	FLOWERS FOODS INC
FLR	FLUOR CORP
FLYR	NAVIGANT INTERNATIONAL
FMER ...	FIRSTMERIT CORP
FMKT ...	FREEMARKETS INC
FOBB ...	FIRST OAK BROOK BANCSHRS
FOE	FERRO CORP
FON	SPRINT FON GROUP
FORR ...	FORRESTER RESEARCH INC
FPIC	FPIC INSURANCE GROUP INC
FPL	FPL GROUP INC
FR	FIRST INDUSTRIAL RLTY TR
FRED ...	FREDS INC
FRK	FLORIDA ROCK INDUSTRIES
FRME ...	FIRST MERCHANTS CORP
FRNT ...	FRONTIER AIRLINES INC
FRT	FEDERAL REALTY INVT
FRX	FOREST LABS INC
FSH	FISHER SCIENTIFIC INTL
FSLA	FIRST SENTINEL BANCORP
FTBK	FRONTIER FINANCIAL CORP
FTI	FMC TECHNOLOGIES INC
FUL	FULLER H B CO
G	GILLETTE CO
GAS	NICOR INC
GBBK ...	GREATER BAY BANCORP
GBCI	GLACIER BANCORP INC
GBND ...	GENERAL BINDING CORP
GBP	GABLES RESIDENTIAL TRUST
GBX	GREENBRIER COMPANIES INC
GCO	GENESCO INC
GDI	GARDNER DENVER INC
GDYS ...	GOODYS FAMILY CLOTHING
GEF	GREIF INC
GERN ...	GERON CORP
GET	GAYLORD ENTMT CO
GGG	GRACO INC
GGP	GENERAL GROWTH PPTYS INC
GIFI	GULF ISLAND FABRICATION
GISX	GLOBAL IMAGING SYSTEMS
GKSRA	G&K SERVICES INC
GLT	GLATFELTER
GLW	CORNING INC
GMRK ..	GULFMARK OFFSHORE INC
GMT	GATX CORP
GPC	GENUINE PARTS CO
GPI	GROUP 1 AUTOMOTIVE INC
GPP	GOVERNMENT PPTYS TRUST
GPT	GREENPOINT FINANCIAL
GRC	GORMAN RUPP CO

Ticker symbol	Company name
GS	GOLDMAN SACHS GROUP INC
GT	GOODYEAR TIRE & RUBBER
GTI	GRAFTECH INTL LTD
GTK	GTECH HOLDINGS CORP
GTY	GETTY REALTY CORP
GW	GREY WOLF INC
GWR	GENESEE & WYOMING INC
GWW	GRAINGER W W INC
GY	GENCORP INC
HARB	HARBOR FLORIDA BANCSHRS
HAS	HASBRO INC
HBAN	HUNTINGTON BANCSHARES
HBEK	HUMBOLDT BANCORP
HBHC	HANCOCK HOLDING CO
HC	HANOVER COMPRESSOR CO
HCA	HCA INC
HCP	HEALTH CARE PROPERTY INV
HD	HOME DEPOT INC
HDI	HARLEY DAVIDSON INC
HET	HARRAHS ENTMT INC
HH	HOOPER HOLMES INC
HHS	HARTE HANKS INC
HIH	HIGHLAND HOSPITALITY
HIW	HIGHWOODS PROPERTIES INC
HLR	HOLLINGER INTERNATIONAL
HLTH	WEBMD CORP
HME	HOME PROPERTIES INC
HMX	HARTMARX CORP
HNR	HARVEST NATURAL RES
HOMS	HOMESTORE INC
HOTT	HOT TOPIC INC
HP	HELMERICH & PAYNE INC
HRB	BLOCK H & R INC
HRH	HILB ROGAL & HOBBS CO
HSY	HERSHEY FOODS CORP
HTCH	HUTCHINSON TECHNOLOGY
HTLD	HEARTLAND EXPRESS INC
HUG	HUGHES SUPPLY INC
HVT	HAVERTY FURNITURE INC
HYC	HYPERCOM CORP
IAAI	INSURANCE AUTO AUCTIONS
ICBC	INDEPENDENCE CMNTY BANK
ICCI	INSIGHT COMMUNICATIONS
ICOS	ICOS CORP
ICST	INTEGRATED CIRCUIT SYS
IDA	IDACORP INC
IDC	INTERACTIVE DATA CORP
IDNX	IDENTIX INC
IES	INTEGRATED ELECTRICAL
IFLO	I-FLOW CORP
IFSIA	INTERFACE INC
IGT	INTL GAME TECHNOLOGY
IHI	INFORMATION HOLDINGS INC
ILA	AQUILA INC
ILE	ISOLAGEN INC
ILXO	ILEX ONCOLOGY INC
IMCL	IMCLONE SYSTEMS INC
IMDC	INAMED CORP
IMKTA	INGLES MARKETS INC
IMMC	IMMUNICON CORP
IN	INFONET SVCS CORP
INCY	INCYTE CORP
INDB	INDEPENDENT BANK MA
INET	INET TECHNOLOGIES INC
INHO	INDEPENDENCE HOLDING CO
INSU	INSITUFORM TECHNOLOGIES
INT	WORLD FUEL SVCS CORP
INTC	INTEL CORP
INTU	INTUIT
IO	INPUT/OUTPUT INC
ION	IONICS INC
IPAS	IPASS INC
ISIS	ISIS PHARMACEUTICALS
ISRG	INTUITIVE SURGICAL INC
ISSC	INNOVATIVE SOLUTIONS
IT	GARTNER INC
ITCD	ITC DELTACOM INC
ITLA	ITLA CAPITAL CORP
ITW	ILLINOIS TOOL WORKS INC
IUSA	INFOUSA INC
IVD	IVAX DIAGNOSTICS INC
JBL	JABIL CIRCUIT INC
JBLU	JETBLUE AIRWAYS CORP
JCI	JOHNSON CONTROLS INC
JCOM	J2 GLOBAL COMMUNICATIONS
JEF	JEFFERIES GROUP INC
JJSF	J & J SNACK FOODS CO
JJZ	JACUZZI BRANDS INC
JKHY	HENRY JACK & ASSOCIATES
JLG	JLG INDUSTRIES INC
JNJ	JOHNSON & JOHNSON
JOYG	JOY GLOBAL INC
JUPM	JUPITERMEDIA CORP
KBH	KB HOME
KERX	KERYX BIOPHARMACEUTICALS
KEX	KIRBY CORP
KEYS	KEYSTONE AUTOMOTIVE INDS
KFED	K FED BANCORP
KLAC	KLA-TENCOR CORP
KMRT	KMART HOLDING CORP
KNGT	KNIGHT TRANSN INC
KNTA	KINTERA INC
KO	COCA COLA CO
KOPN	KOPIN CORP
KR	KROGER CO
KRB	MBNA CORP
KRI	KNIGHT RIDDER INC
KROL	KROLL INC
KRT	KRAMONT REALTY TRUST
KSE	KEYSPAN CORP
KSS	KOHLS CORP
KSWS	K-SWISS INC
KTO	K2 INC
KYPH	KYPHON INC
L	LIBERTY MEDIA CORP
LABS	LABONE INC
LACO	LAKES ENTERTAINMENT INC
LAWS	LAWSON PRODUCTS INC
LBY	LIBBEY INC
LCI	LANNETT CO INC
LEG	LEGGETT & PLATT INC
LEND	ACCREDITED HOME LENDERS
LEXG	LEXICON GENETICS INC
LFB	LONGVIEW FIBRE CO
LG	LACLEDE GROUP INC
LHO	LASALLE HOTEL PROPERTIES
LIFC	LIFECELL CORP
LIN	LINENS N THINGS INC
LIZ	LIZ CLAIBORNE INC
LKQX	LKQ CORP
LLY	LILLY ELI & CO
LNET	LODGENET ENTMT CORP
LNR	LNR PROPERTY CORP
LPNT	LIFEPOINT HOSPITALS
LPX	LOUISIANA PACIFIC CORP
LSCC	LATTICE SEMICONDUCTOR
LSCP	LASERSCOPE
LSE	CAPITAL LEASE FUNDING
LSS	LONE STAR TECHNOLOGIES
LSTR	LANDSTAR SYSTEMS INC
LTC	LTC PROPERTIES INC
LTD	LIMITED BRANDS INC
LTRE	LEARNING TREE INTL INC
LUM	LUMINENT MORTGAGE CAP
LXP	LEXINGTON CORP PPTYS
LZ	LUBRIZOL CORP
MAA	MID–AMER APT CMNTYS
MAG	MAGNETEK INC
MAPX	MAPICS INC
MATK	MARTEK BIOSCIENCES CORP
MATW	MATTHEWS INTERNATIONAL
MAY	MAY DEPARTMENT STORES CO
MBTF	MBT FINANCIAL CORP
MCBC	MACATAWA BANK CORP
MCDTA	MCDATA CORP
MCH	MILLENNIUM CHEMICALS
MCRL	MICREL INC
MDC	MDC HOLDINGS INC
MDCO	MEDICINES CO
MEDT	MEDSOURCE TECHNOLOGIES
MERQ	MERCURY INTERACTIVE CORP
METH	METHODE ELECTRS INC
MFA	MFA MORTGAGE INVESTMENTS
MFW	M & F WORLDWIDE CORP
MGG	MGM MIRAGE
MHC	MANUFACTURED HOME CMNTYS
MHO	M/I HOMES INC
MICU	MICURON PHARMACEUTICALS
MIDD	MIDDLEBY CORP
MIL	MILLIPORE CORP
MIPS	MIPS TECHNOLOGIES INC
MKC	MCCORMICK & CO INC
MKL	MARKEL CORP
MKSI	MKS INSTRUMENTS INC
MLAN	MIDLAND CO
MMC	MARSH & MCLENNAN COS
MNRO	MONRO MUFFLER BRAKE INC
MNST	MONSTER WORLDWIDE INC
MODI	MODINE MANUFACTURING CO
MOGN	MGI PHARMA INC
MON	MONSANTO CO
MONE	MATRIXONE INC
MOV	MOVADO GROUP INC
MPG	MAGUIRE PPTYS INC
MPX	MARINE PRODUCTS CORP
MRD	MACDERMID INC
MRGE	MERGE TECHNOLOGIES INC
MRO	MARATHON OIL CORP
MRX	MEDICIS PHARMACEUTICAL
MSA	MINE SAFETY APPLIANCES
MSCC	MICROSEMI CORP
MSEX	MIDDLESEX WATER CO
MSFG	MAINSOURCE FINANCIAL GRP
MSM	MSC INDL DIRECT INC
MTEX	MANNATECH INC
MTG	MGIC INVESTMENT CORP
MTN	VAIL RESORTS INC
MTRX	MATRIX SERVICE CO
MTW	MANITOWOC CO INC
MUSA	METALS USA INC
MVL	MARVEL ENTERPRISES INC
MW	MENS WEARHOUSE INC
MWD	MORGAN STANLEY
NABC	NEWALLIANCE BANCSHARES
NABI	NABI BIOPHARMACEUTICALS
NAFC	NASH FINCH CO
NATI	NATIONAL INSTRS CORP
NAVG	NAVIGATORS GROUP INC
NBIX	NEUROCRINE BIOSCIENCES
NBL	NOBLE ENERGY INC
NCS	NCI BUILDING SYSTEMS INC
NDC	NDCHEALTH CORP
NEU	NEW MARKET CORPORATION
NFB	NORTH FORK BANCORP
NFP	NATIONAL FINL PARTNERS
NHI	NATIONAL HEALTH INVS INC
NITE	KNIGHT TRADING GROUP INC
NLS	NAUTILUS GROUP INC

Ticker symbol	Company name
NLY	ANNALY MORTAGE MGMT INC
NMG.A	NEIMAN MARCUS GROUP INC
NNBR	NN INC
NNI	NELNET INC
NOVN	NOVEN PHARMACEUTICALS
NPBC	NATIONAL PENN BANCSHARES
NPSP	NPS PHARMACEUTICALS INC
NR	NEWPARK RESOURCES INC
NRGN	NEUROGEN CORP
NSIT	INSIGHT ENTERPRISES INC
NST	NSTAR
NTEC	NEOSE TECHNOLOGIES INC
NTLI	NTL INC
NTY	NBTY INC
NU	NORTHEAST UTILITIES
NUE	NUCOR CORP
NUTR	NUTRACEUTICAL INTL CORP
NVLS	NOVELLUS SYSTEMS INC
NVR	NVR INC
NXST	NEXSTAR BROADCASTING
NYM	NYMAGIC INC
NYT	NEW YORK TIMES CO
OCA	ORTHODONTIC CTRS OF AMER
OCAS	OHIO CASUALTY CORP
OI	OWENS ILLINOIS INC
OIS	OIL STATES INTERNATIONAL
OME	OMEGA PROTEIN CORP
OMEF	OMEGA FINANCIAL CORP
OMI	OWENS & MINOR INC
ONB	OLD NATIONAL BANCORP
ONXX	ONYX PHARMACEUTICALS INC
OPNT	OPNET TECHNOLOGIES INC
ORCL	ORACLE CORP
ORLY	O REILLY AUTOMOTIVE INC
OS	OREGON STEEL MILLS INC
OSBC	OLD SECOND BANCORP INC
OSG	OVERSEAS SHIPHOLDNG GRP
OSI	OUTBACK STEAKHOUSE INC
OSIP	OSI PHARMACEUTICALS
OSTK	OVERSTOCK COM INC
OSUR	ORASURE TECHNOLOGIES INC
OTL	OCTEL CORP
OTTR	OTTER TAIL CORP
OVRL	OVERLAND STORAGE INC
OVTI	OMNIVISION TECHNOLOGIES
OXM	OXFORD INDUSTRIES INC
PACR	PACER INTERNATIONAL INC
PAS	PEPSIAMERICAS INC
PAX	PAXSON COMMUNICATION
PAYX	PAYCHEX INC
PBI	PITNEY BOWES INC
PBKS	PROVIDENT BANKSHARES
PCAR	PACCAR INC
PCCC	P C CONNECTION
PCG	PG&E CORP
PCH	POTLATCH CORP
PCL	PLUM CREEK TIMBER CO INC
PCSA	AIRGATE PCS INC
PCTY	PARTY CITY CORP
PCU	SOUTHERN PERU COPPER
PCYC	PHARMACYCLICS INC
PD	PHELPS DODGE CORP
PDLI	PROTEIN DESIGN LABS INC
PDX	PEDIATRIX MEDICAL GROUP
PEET	PEETS COFFEE & TEA INC
PEG	PUBLIC SVC ENTERPRISE
PEGA	PEGASYSTEMS INC
PENG	PRIMA ENERGY CORP
PENN	PENN NATIONAL GAMING INC
PEP	PEPSICO INC
PER	PEROT SYSTEMS CORP
PETS	PETMED EXPRESS INC
PFE	PFIZER INC
PFGC	PERFORMANCE FOOD GROUP
PFGI	PROVIDENT FINANCIAL GRP
PFS	PROVIDENT FINANCIAL SVCS
PFSB	PENNFED FINANCIAL SVCS
PGNX	PROGENICS PHARMACEUTICAL
PH	PARKER HANNIFIN CORP
PHCC	PRIORITY HEALTHCARE
PHLY	PHILADELPHIA CONS HLDG
PICO	PICO HOLDINGS INC
PII	POLARIS INDUSTRIES INC
PILL	PROXYMED PHARMACY INC
PLAB	PHOTRONICS INC
PLD	PROLOGIS
PLRE	PRICE LEGACY CORP
PLUG	PLUG POWER INC
PLXS	PLEXUS CORP
PLXT	PLX TECHNOLOGY INC
PMCS	PMC–SIERRA INC
PMTI	PALOMAR MEDICAL TECH
PNK	PINNACLE ENTMT INC
PNM	PNM RESOURCES INC
PNR	PENTAIR INC
POP	POPE & TALBOT INC
POS	CATALINA MARKETING CORP
POWL	POWELL INDUSTRIES INC
POZN	POZEN INC
PPC	PILGRIMS PRIDE CORP
PPL	PPL CORP
PPP	POGO PRODUCING CO
PRFS	PENNROCK FINANCIAL SVCS
PRM	PRIMEDIA INC
PRSF	PORTAL SOFTWARE INC
PRSP	PROSPERITY BANCSHARES
PRTR	PARTNERS TRUST FINL GRP
PSA	PUBLIC STORAGE INC
PSB	PS BUSINESS PARKS INC
PSD	PUGET ENERGY INC
PSFT	PEOPLESOFT INC
PSRC	PALMSOURCE INC
PSS	PAYLESS SHOESOURCE INC
PSSI	PSS WORLD MEDICAL INC
PTMK	PATHMARK STORES INC
PVH	PHILLIPS VAN HEUSEN
PVTB	PRIVATEBANCORP INC
PWAV	POWERWAVE TECHNOLOGIES
PWER	POWER–ONE INC
PWR	QUANTA SERVICES INC
PX	PRAXAIR INC
PXLW	PIXELWORKS INC
PXP	PLAINS EXPLORATION & PRO
QSFT	QUEST SOFTWARE INC
QSII	QUALITY SYSTEMS INC
QUIX	QUIXOTE CORP
R	RYDER SYSTEM INC
RA	RECKSON ASSOCS RLTY
RAE	RAE SYSTEMS INC
RAH	RALCORP HOLDINGS INC
RAVN	RAVEN INDUSTRIES INC
RBC	REGAL BELOIT CORP
RBNC	REPUBLIC BANCORP INC MI
RBPAA	ROYAL BANCSHARES OF PENN
RCRC	RC2 CORP
RDC	ROWAN COMPANIES INC
RDI	READING INTERNATIONAL IN
REG	REGENCY CENTERS CORP
RF	REGIONS FINANCIAL CORP
RGLD	ROYAL GOLD INC
RGR	STURM RUGER & CO INC
RGS	REGIS CORP
RHD	R H DONNELLEY CORP
RJR	REYNOLDS R J TOB HLDGS
RKT	ROCK–TENN CO
RL	POLO RALPH LAUREN CO
RLI	RLI CORP
RLRN	RENAISSANCE LEARNING INC
RMBS	RAMBUS INC
RMK	ARAMARK CORP
ROG	ROGERS CORP
ROH	ROHM & HAAS CO
ROL	ROLLINS INC
ROV	RAYOVAC CORP
RRA	RAILAMERICA INC
RRI	RELIANT ENERGY INC
RSG	REPUBLIC SERVICES INC
RSH	RADIOSHACK CORP
RSYS	RADISYS CORP
RTI	RTI INTERNATIONAL METALS
RUSHB	RUSH ENTERPRISES INC
SAFM	SANDERSON FARMS INC
SBAC	SBA COMMUNICATIONS CORP
SBNY	SIGNATURE BANK
SBSE	SBS TECHNOLOGIES INC
SCHL	SCHOLASTIC CORP
SCHN	SCHNITZER STEEL INDS
SCHS	SCHOOL SPECIALTY INC
SCLN	SCICLONE PHARMACEUTICALS
SCMF	SOUTHERN CMNTY FINL CORP
SCS	STEELCASE INC
SEBL	SIEBEL SYSTEMS INC
SECD	SECOND BANCORP INC
SEH	SPARTECH CORP
SEIC	SEI INVESTMENTS CO
SFCC	SFBC INTERNATIONAL INC
SFD	SMITHFIELD FOODS INC
SFE	SAFEGUARD SCIENTIFICS
SFN	SPHERION CORP
SFSW	STATE FINANCIAL SERVICES
SGA	SAGA COMMUNICATIONS
SGEN	SEATTLE GENETICS INC
SHLM	SCHULMAN A INC
SHW	SHERWIN WILLIAMS CO
SIR	SIRVA INC
SJI	SOUTH JERSEY INDUSTRIES
SJW	SJW CORP
SLFI	STERLING FINL CORP PA
SLG	SL GREEN REALTY CORP
SLR	SOLECTRON CORP
SMHG	SANDERS MORRIS HARRIS
SMSC	STANDARD MICROSYSTEM
SMTC	SEMTECH CORP
SNH	SENIOR HOUSING PPTYS TR
SNRR	SUNTERRA CORP
SNS	STEAK N SHAKE CO
SNWL	SONICWALL INC
SO	SOUTHERN CO
SONE	S1 CORPORATION
SORC	SOURCE INTERLINK COS INC
SRCL	STERICYCLE INC
SRDX	SURMODICS INC
SRNA	SERENA SOFTWARE INC
SRP	SIERRA PACIFIC RESOURCES
SRZ	SUNRISE SENIOR LIVING
SSI	SPECTRASITE INC
SSP	SCRIPPS E W CO
STEI	STEWART ENTERPRISES
STFC	STATE AUTO FINANCIAL
STK	STORAGE TECHNOLOGY CORP
STL	STERLING BANCORP
STMP	STAMPS COM INC
STN	STATION CASINOS INC
STRA	STRAYER EDUCATION INC
STRT	STRATTEC SECURITY CORP
STSI	STAR SCIENTIFIC INC
STT	STATE STREET CORP
STZ	CONSTELLATION BRANDS
SUI	SUN COMMUNITIES INC

Ticker symbol	Company name
SUNN ...	SUNTRON CORP
SUNW ..	SUN MICROSYSTEMS INC
SUP	SUPERIOR INDUSTRIES INTL
SUPX ...	SUPERTEX INC
SVM	SERVICEMASTER CO
SWBT ...	SOUTHWEST BANCORP OF TEX
SWK	STANLEY WORKS
SWW	SITEL CORP
SWX	SOUTHWEST GAS CORP
SWY	SAFEWAY INC
SYD	SYBRON DENTAL SPECIALTIE
SYK	STRYKER CORP
SYX	SYSTEMAX INC
SYY	SYSCO CORP
TARR ...	TARAGON REALTY INVS INC
TASR ...	TASER INTL INC
TBCC ...	TBC CORP
TCC	TRAMMELL CROW CO
TCR	CORNERSTONE RLTY INC TR
TDW	TIDEWATER INC
TDY	TELEDYNE TECHNOLOGIES
TECUA	TECUMSEH PRODS CO
TELK	TELIK INC
TERN ...	TERAYON COMM SYSTEMS INC
TG	TREDEGAR CORP
TGI	TRIUMPH GROUP INC
TGIC	TRIAD GUARANTY INC
TGT	TARGET CORP
THFF	FIRST FINANCIAL CORP
THO	THOR INDUSTRIES INC
THOR ...	THORATEC CORP
THX	HOUSTON EXPLORATION CO
TIF	TIFFANY & CO
TKLC	TEKELEC
TKR	TIMKEN CO
TLAB	TELLABS INC
TLB	TALBOTS INC
TLRK	TULARIK INC
TMA	THORNBURG MORTGAGE INC
TMG	TRANSMONTAIGNE INC
TMWD ..	TUMBLEWEED COMMUNICATION
TOL	TOLL BROTHERS INC
TOY	TOYS R U.S. INC
TPTI	TIPPINGPOINT TECH INC
TQNT ...	TRIQUINT SEMICONDUCTOR
TR	TOOTSIE ROLL INDUSTRIES
TRCA ...	TERCICA INC
TRMK ...	TRUSTMARK CORP
TRST	TRUSTCO BANK CORP NY
TRZ	TRIZEC PROPERTIES INC
TSA	SPORTS AUTHORITY INC
TSFG ...	SOUTH FINANCIAL GROUP
TTC	TORO CO
TTEC	TELETECH HOLDINGS INC
TTMI	TTM TECHNOLOGIES INC
TWX	TIME WARNER INC
TXI	TEXAS INDUSTRIES INC
TXN	TEXAS INSTRUMENTS INC
TXT	TEXTRON INC
TXU	TXU CORP
UBA	URSTADT BIDDLE PPTYS INS
UCBH ...	UCBH HOLDINGS INC
UCI	UICI
UCL	UNOCAL CORP
UFPI	UNIVERSAL FOREST PRODS
UGI	UGI CORP
UHAL ...	AMERCO
UIC	UNITED INDUSTRIAL CORP
ULBI	ULTRALIFE BATTERIES INC
ULCM ...	ULTICOM INC
UNF	UNIFIRST CORP MASS
UOPX ...	APOLLO GRP UNIV PHOENIX
URS	URS CORP
USG	U S G CORP
USON ...	US ONCOLOGY INC
UTHR ...	UNITED THERAPEUTICS
UVN	UNIVISION COMMUNICATIONS
UVV	UNIVERSAL CORP
VAR	VARIAN MEDICAL SYSTEMS
VARI	VARIAN INC
VCBI	VIRGINIA COMM BANCORP
VECO ...	VEECO INSTRUMENTS INC
VFC	V F CORP
VGR	VECTOR GROUP LTD
VICR	VICOR CORP
VITA	ORTHOVITA INC
VITL	VITAL SIGNS INC
VLO	VALERO ENERGY CORP
VLY	VALLEY NATIONAL BANCORP
VMSI	VENTANA MEDICAL SYSTEMS
VRC	VARCO INTERNATIONAL INC
VRNT ...	VERINT SYSTEMS INC
VRTX ...	VERTEX PHARMACEUTICALS
VSAT	VIASAT INC
VSH	VISHAY INTERTECHNOLOGY
VTA	VESTA INS GROUP INC
VTIV	VENTIV HEALTH INC
VVTV	VALUEVISION MEDIA INC
VXGNE	VAXGEN INC
WAB	WABTEC CORP
WASH ..	WASHINGTON TRUST BANCORP
WAT	WATERS CORP
WBS	WEBSTER FINANCIAL CORP
WEBM ..	WEBMETHODS INC
WEN	WENDYS INTERNATIONAL INC
WEYS ..	WEYCO GROUP INC
WFR	MEMC ELECTRIC MATERIALS
WFSG ..	WILSHIRE FINANCIAL SVCS
WHQ	W–H ENERGY SVCS INC
WIND ...	WIND RIVER SYSTEMS INC
WLT	WALTER INDUSTRIES INC
WMGI ...	WRIGHT MEDICAL GROUP INC
WMT	WAL MART STORES INC
WNC	WABASH NATIONAL CORP
WON	WESTWOOD ONE INC
WOR	WORTHINGTON INDUSTRIES
WPI	WATSON PHARMACEUTICALS
WPO	WASHINGTON POST CO
WPSC ..	WHEELING PITTSBURGH CORP
WR	WESTAR ENERGY INC
WRC	WESTPORT RESOURCES CORP
WRE	WASHINGTON REAL ESTATE
WRLD ..	WORLD ACCEPTANCE CORP
WSBA ..	WESTERN SIERRA BANCORP
WSBC ..	WESBANCO INC
WSBK ..	WILSHIRE STATE BANK
WSO	WATSCO INC
WST	WEST PHARMACEUTICAL SVCS
WSTL ...	WESTELL TECHNOLOGIES INC
WTBA ...	WEST BANCORPORATION INC
WW	WATSON WYATT & CO HLDGS
WWE	WORLD WRESTLING ENTMNT
WWY	WRIGLEY WM JR CO
WXH	WINSTON HOTELS INC
WY	WEYERHAEUSER CO
WYE	WYETH
XLNX	XILINX INC
XLTC	EXCEL TECHNOLOGY INC
XRIT	X-RITE INC
XTO	XTO ENERGY INC
Y	ALLEGHANY CORP
YRK	YORK INTERNATIONAL CORP
ZBRA ...	ZEBRA TECHNOLOGIES CORP
ZGEN ...	ZYMOGENETICS INC
ZHNE ...	ZHONE TECHNOLOGIES INC
ZIGO	ZYGO CORP
ZILA	ZILA INC
ZION	ZIONS BANCORPORATION
ZLC	ZALE CORP
ZMH	ZIMMER HOLDINGS INC
ZQK	QUIKSILVER INC

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Part IV

Department of Housing and Urban Development

Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2005; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4937–N–01]

Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2005

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Proposed Fiscal Year (FY) 2005 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. The Department's regulations at 24 CFR part 888 provide a notice and comment process for developing FMRs. Today's notice proposes FMRs for FY2005. The proposed numbers would amend FMR schedules used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based section 8 contracts, and to determine initial rents for housing assistance payment (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes.

Proposed FY2005 FMRs are based on 40th percentile recent mover FMR estimates for most areas, but FMRs for 38 metropolitan areas are shown at the 50th percentile FMR standard. The 50th percentile FMRs were initiated in 2001 to increase housing choice opportunities in metropolitan areas where high percentages of vouchers were being used in high poverty census tracts. For informational purposes, 40th percentile FMRs for the 38 areas that currently have 50th percentile FMRs are also listed.

The proposed FY2005 FMRs in this notice are the first to utilize new Office of Management and Budget (OMB) area definitions and 2000 Census data (which became available in September 2003). The FMR estimates have been trended to April 2005, the mid-point of FY2005.

DATES: *Comments Due Date:* September 7, 2004. Due to a number of technical and policy issues associated with rebenchmarking the FY2004 FMRs with 2000 Census data, the proposed FY2005 FMRs are being published later than usual. HUD is required to publish FMRs for effect by October 1, 2004. To meet this requirement, HUD is allowing a 30-day comment submission period for the FMRs proposed in this notice. Reviews of these comments will be reflected in a **Federal Register** notice issued on or about October 1, 2004. HUD will accept comments during the 60-day period following the initial 30-day comment period. Comments received during the 60-day period will be considered for inclusion in a subsequent FY2005 **Federal Register** FMR notice.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD field office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (8 a.m. to 5 p.m. eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Hernandez, Director, Office of Housing Voucher Programs, telephone (202) 708–2934, responsible for decisions on how fair market rents are used; or Mark Johnston, Office of Special Needs Assistance Programs, telephone (202) 708–4300, responsible for administration of the Mod Rehab Single Room Occupancy program. For technical information on the methodology used to develop fair market rents or a listing of all fair market rents, please call the HUD USER information line at 800–245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html*. Further questions on the methodology may be addressed to Marie L. Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, e-mail *marie_l._lihn@hud.gov*. Hearing- or speech-impaired persons may use the Telecommunications Device for the Deaf (TTY) at (800) 927–7589. (Other than the HUD USER and TTY numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the Housing Choice Voucher program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (*see* 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. The interim rule published on October 2, 2000 (65 FR 58870), established 50th percentile FMRs for certain areas.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD news page: *http://www.hudclips.org*. **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.gpoaccess.gov/fr/index.html*.

II. Procedures for the Development of FMRs

Section 8(a) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Departments regulations provide that HUD will develop proposed FMRs, publish them for public comment, analyze the comments, and publish final FMRs. (*See* 24 CFR 888.115.) Final FY2005 FMRs will be published on or before October 1, 2004, as required by section 8(c)(1) of the USHA.

III. Fair Market Rent Schedules

This notice proposes revised FMRs for FY2005. These are the first FMRs calculated using 2000 Census data, which only recently became available in the level of detail (recent mover, standard-quality unit rents by number of bedrooms) necessary to calculate FMRs. The Department refers to the use of new decennial census data to revise FMRs as "rebenchmarking." This process involves replacing the base year FMR estimates with those developed from new Census data and then updating the Census-based estimates from the date of the Census to the midpoint of the program year during which the FMRs will be in effect. The proposed FY2005 FMRs for all areas in the country have been rebenchmarked, either with Census data or with Random Digit Dialing surveys or American Housing Surveys conducted after the date of the 2000 Census.

In addition to the use of Census 2000 data for FMRs, these FMRs also reflect a change in metropolitan area definitions. Please see the following

section on Metropolitan Area Definitions for a discussion of housing market areas and HUD's use of OMB-defined metropolitan area. Due to the rebenchmarking and the changes in area definitions, the proposed FMRs for many areas differ from the normal updating of last year's FMRs.

Schedules B(1) and B(2) at the end of this document list the proposed FMR levels for rental housing. Schedule B(1) lists the proposed 2005 FMRs for all areas using the estimated 40th or 50th percentile FMR standard. An asterisk in Schedule B(1) identifies the FMR areas where use of 50th percentile FMRs had been authorized. There are some metropolitan areas and parts of metropolitan areas that previously qualified for 50th percentile FMRs but no longer do so because of OMB area definitional changes.

Schedule B(1) contains 40th percentile FMRs for most areas, but provides 50th percentile FMRs for the following metropolitan FMR areas:

Albuquerque, NM	Atlanta-Sandy Springs-Marietta, GA.
Austin-Round Rock, TX	Baton Rouge, LA.
Buffalo-Niagara Falls, NY	Chicago-Naperville-Joliet, IL.
Cleveland-Elyria-Mentor, OH	Dallas-Plano-Irving, TX.
Denver-Aurora, CO	Detroit-Livonia-Dearborn, MI.
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	Fort Worth-Arlington, TX.
Grand Rapids-Wyoming, MI	Houston-Baytown-Sugar Land, TX.
Kansas City, MO-KS	Las Vegas-Paradise, NV.
Miami-Miami Beach-Kendall, FL	Minneapolis-St. Paul-Bloomington, MN-WI.
Newark-Union, NJ-PA	Oakland-Fremont-Hayward, CA.
Oklahoma City, OK	Oxnard-Thousand Oaks-Ventura, CA.
Philadelphia, PA	Phoenix-Mesa-Scottsdale, AZ.
Richmond-Petersburg, VA	Sacramento-Arden-Arcade-Roseville, CA.
St. Louis, MO-IL	Salt Lake City-Ogden, UT.
San Antonio, TX	San Diego-Carlsbad-San Marcos, CA.
San Jose-Sunnyvale-Santa Clara, CA	Santa Ana-Anaheim-Irvine, CA.
Tampa-St. Petersburg-Clearwater, FL	Tulsa, OK.
Virginia Beach-Norfolk-Newport News, VA-NC	Washington-Arlington-Alexandria, DC-VA-MD-WV.
West Palm Beach-Boca Raton-Boynton Beach, FL	Wichita, KS.

For informational purposes, Schedule B(2) of this document provides the 40th percentile FMR standard for the 38 areas that have a 50th percentile rent shown in Schedule B(1). FMR areas are listed by State; a FMR area that covers parts of two States will be shown under each State listing.

FMRs for the Moderate Rehabilitation program are 120 percent of the Schedule B(1) Fair Market Rents (see 24 CFR 882.408(a) and 888.113(e)(1)). The payment standard amount for a single-room occupancy unit in the Rental Voucher program is 75 percent of the efficiency FMR listed in Schedule B(1).

Manufactured home space rents are set at 40 percent of the Schedule B(1) FMR and include utilities. Exceptions to this calculated rent are based on surveys of space rents plus utilities and are shown on Schedule D.

IV. Metropolitan Area Definitions

A housing market area is a geographic area where housing units of similar characteristics are in competition with each other. With a few exceptions identified below, HUD uses OMB-defined metropolitan areas as the geographic basis for defining housing markets because of the correspondence that typically exists between these definitions and housing market area definitions.

As part of the 2000 Census process, OMB released new metropolitan area definitions on June 6, 2003, and updated them on February 18, 2004. The new 2000 Census-based metropolitan area standards use somewhat different terminology than previously in use. The 1980 and 1990 Census-based standards identified two types of metropolitan areas: (1) Metropolitan Statistical Areas (MSAs), and (2) Consolidated Metropolitan Statistical Areas (CMSAs). CMSAs were large metropolitan areas that had two or more large, distinct subparts referred to as Primary Metropolitan Statistical Areas (PMSAs). For instance, the Baltimore-Washington metropolitan area was categorized as a CMSA, and it was split into a Baltimore PMSA and a Washington, DC PMSA. Counties were the building blocks for metropolitan area definitions except in New England, where aggregations of townships were used to define metropolitan areas. HUD FMR areas were defined using MSA and PMSA definitions.

The terms "Consolidated Metropolitan Statistical Area" and "Primary Metropolitan Statistical Area" are now obsolete. Under the 2000 standards, the term "Metropolitan Statistical Area" is used for all metropolitan areas. These areas are also referred to as Core-Based Statistical Areas (CBSAs). A large metropolitan CBSA area may be divided into "Metropolitan Divisions," which consist of a county or group of counties within a Metropolitan Statistical Area that has a population core of at least 2.5 million. A Metropolitan Division is similar in concept to the now obsolete Primary Metropolitan Statistical Area concept. Special note should be made of the fact that the new metropolitan area definitions are county-based. This results in significant changes in how some New England metropolitan areas are defined.

While a Metropolitan Division is a subdivision of a large Metropolitan Statistical Area, it functions as a distinct social, economic, and cultural area within the larger region. Metropolitan Divisions are given separate statistical identities (*e.g.*, Census reports will provide separate estimates for these areas). Federal agencies that had been using Primary Metropolitan Statistical Areas for program administrative and fund allocation purposes were directed by OMB to consider replacing them with Metropolitan Divisions because of the conceptual similarities.

Many metropolitan areas have been revised to include counties previously designated as nonmetropolitan areas. Some of these formerly nonmetropolitan counties will find that the proposed FY2005 FMRs are substantially higher. Counties with substantial increases in the FMR may find program implementation difficult because of insufficient funding. These counties should apply to the Office of Public and Indian Housing for exception rents below 90 percent of the FMR standard (*See* 24 CFR 982.503) when appropriate.

The revised OMB definitions identify two types of nonmetropolitan areas. A "Micropolitan Area" consists of one or

more counties that meet certain population size and other criteria. Remaining nonmetropolitan areas consist of individual nonmetropolitan counties that lack the "Micropolitan Area" designation.

HUD has made two changes to OMB area definitions in establishing proposed FY2005 FMR areas. One change is legislatively mandated, and requires establishing separate FMRs for Westchester County, New York, even though it is part of the New York City Metropolitan Area. The other change relates to Virginia independent cities, which are treated as county-equivalents by the Census but which are too small to be considered distinct housing market areas. For FMR program purposes, Virginia independent cities are associated with a metropolitan area or nonmetropolitan county. Independent cities that fall within metropolitan or micropolitan areas are considered a part of those areas and will be listed in their respective metropolitan, micropolitan, or nonmetropolitan area.

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Clifton Forge, Covington.
Carroll	Galax.
Greensville	Emporia.
Rockbridge	Buena Vista and Lexington.
Southhampton	Franklin.
Wise	Norton.

Fiftieth percentile FMRs were originally assigned to 39 areas. Current OMB definitions split four of these areas into metropolitan divisions: Chicago, Detroit, Philadelphia and Washington, DC. The core part of these areas remains qualified for 50th percentile FMRs, but the parts put into separate metropolitan divisions are no longer qualified. In addition, the merger of Bergen-Passaic into the New York City Division means that those counties are no longer qualified to have 50th percentile FMRs. Therefore, under the new metropolitan area definitions, only 38 areas have 50th percentile FMRs.

V. Method Used To Develop FMRs

FMR Standard: FMRs are gross rent estimates that include both shelter rent paid by the tenant to the landlord, and the cost of tenant-paid utilities, except telephones. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units in neighborhoods and low enough to serve as many families as possible.

FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area (*see* 24 CFR 888.113). FMRs are based on the distribution of rents for units that are occupied by recent movers. The distribution does not include rents for units less than two years old and is adjusted for public housing units.

Attached FMR Schedule B(1) provides FY2005 FMRs at the 40th or 50th percentile of rents paid by recent movers for all areas. The 50th percentile FMRs were assigned to large metropolitan areas that had high program concentrations in high poverty areas. Schedule B(2) provides FY2005 FMRs at the 40th percentile for the 38 areas that are currently set at the 50th percentile. The 40th percentile rent standard means that 40 percent of all standard-quality rental housing units rented by recent movers have rents at or below this dollar amount. Public Housing Authorities (PHAs) have discretion to increase their payment standards to 110 percent of published FMRs. Because the variation in rents between the 40th and 60th percentiles is so small, a 10 percent increase in a rent set at the 40th percentile produces a rent standard that is, on average, equal to the 55th percentile of rents paid by recent movers (*i.e.*, 55 percent of all recent mover rents are below this rent level).

Data Sources

HUD has used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 2000 Census, which provides statistically reliable rent data for all FMR areas,

(2) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing, and

(3) American Housing Surveys (AHS) of the largest metropolitan areas and have statistical accuracy comparable to the decennial Census.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or on HUD regional rent-change factors developed from regional RDD surveys. There are 76 metropolitan areas that are covered by metropolitan CPI surveys. For all other areas, RDD regional rent-change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base-year estimates for all FMR areas that are not covered by a metropolitan CPI survey.

The decennial Census provides statistically reliable rent data for use in establishing base-year FMRs. The RDD telephone survey technique is based on a sampling procedure that uses computers to select statistically random samples of telephone numbers that are then contacted to seek information on rental housing. RDD surveys are conducted for two purposes: (1) For developing FMR estimates for selected individual FMR areas, and (2) for developing HUD regional gross rent-change factors. The HUD Regional surveys are conducted annually. Contingent on funding, HUD conducts 60 to 80 individual FMR area surveys each year. In late 2005, Census American Community Survey (ACS) data will begin to become available that will provide highly reliable annual rent estimates for most metropolitan areas, and eliminate the need for HUD regional RDD surveys as well as most local RDD surveys. The ACS will collect the same type of rent data as the decennial Census. ACS data will be used to replace HUD regional RDD surveys in FY 2006 FMRs, and area-specific ACS FMR estimates will also become available for use. The AHS is used to develop between Census revisions for the largest metropolitan areas on a four-year cycle. Those surveys used in the FY2005 FMRs were conducted in 2002.

Areas With FMRs Based on 2000 Census Data

For areas where the base-year estimates were developed from the 2000 Census, the 40th and, where appropriate, 50th percentile gross rent of standard-quality units occupied by recent movers was calculated separately for each number of bedrooms. The rent distributions were modified to eliminate public housing units, so that only market-rent units are considered. FMRs are calculated for all metropolitan areas or divisions, and all nonmetropolitan counties or micropolitan areas.

The rents for three-bedrooms units continue to reflect HUD's policy to set higher rents for three-bedroom and larger units than would result from using normal market rents. This adjustment was intended to increase the likelihood that the largest families, who have the most difficulty leasing units, will be successful in finding eligible program units. The adjustment added 8.7 percent to the three-bedroom FMRs

and corresponding increases for four-bedroom and larger units.

The FMR for unit sizes larger than four bedrooms were calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

A further adjustment was made for areas with local bedroom-size intervals above or below what are considered to be reasonable ranges. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to recognize in setting FMRs (*e.g.*, luxury efficiency apartments in New York City). Bedroom interval ranges were established based on an analysis of the range of such intervals for all metropolitan areas. The final ranges used were: efficiency units must be between .66 and .84 of the two-bedroom FMR, one-bedroom units must be between .78 and .89 of the two-bedroom unit, three-bedroom units must be between 1.21 and 1.42 of the two-bedroom unit and four-bedroom units must be between 1.23 and 1.66 of the two-bedroom unit. Rents were then adjusted if they were non-sequential (*e.g.*, efficiency rents were not allowed to be higher than one-bedroom rents).

State minimum FMRs will no longer be used. Instead, for low-population nonmetropolitan counties with small Census recent-mover rent samples, Census-defined county group data were used as the basis for determining rents for each bedroom size. (Census county groups consist of an aggregation of counties with similar social and economic characteristics.) This adjustment was made to protect against unrealistically high or low FMRs due to insufficient sample sizes. The areas covered by this new estimation method have less than 33 two-bedroom Census sample observations.

After base 2000 Census estimates were established for each FMR area and bedroom size, they were updated from the estimated Census date of April 1, 2000, to April 1, 2005, the midpoint of FY2005, the year in which these FMRs will be in effect. Update factors were based either on the area-specific CPI survey data that were available for the largest metropolitan areas or on HUD regional RDD survey data.

For areas with local CPI surveys, CPI annual data on rents and utilities were used to update the Census rent estimates. Three-quarters of the 2000 CPI change factor was used to bring the FMR estimates forward from April to December of 2000, followed by the annual CPI data for 2001, 2002, and 2003. An annual trending factor of three percent, based on the average annual increase in the median gross rent as measured in the 1990 and 2000 Census, was used to update estimates from the last date for which CPI data were available until the midpoint of the fiscal year in which the estimates were used. Trending to cover the period from January 1, 2004, to April 1, 2005, was needed. The 15-month trending factor was 3.75 percent (3 percent times 15/12).

For areas without local CPI surveys, the same process was used except that regional RDD survey data were substituted for CPI data. Regional RDD surveys were done for 20 areas—the metropolitan and nonmetropolitan part of each of the 10 HUD regions. Areas covered by CPI metropolitan surveys were excluded from the RDD metropolitan regional surveys.

The use of the 2000 Census rent data and the change in OMB area definitions resulted in significant revisions for a large number of FMR areas this year. The availability of more detailed local information on public housing, which is excluded from FMR estimates, also affected these estimates. Because of extensive metropolitan geographical definitional changes, FMRs for many old and new areas cannot be directly compared. Counties offer the best unit of comparison, but don't work well in New England. Approximately 22 percent of all counties have proposed FY2005 FMRs that are less than their final FY2004 FMRs, and 36 percent of counties had increases of more than 10 percent over the FY2004 FMRs as a result of rebenchmarking. A disproportionate number of areas with increases are small nonmetropolitan counties.

A number of RDDs will be conducted in the summer of 2004 for metropolitan areas with unusual changes to ensure that their FY2005 FMRs are accurate. Areas where completed surveys show that an increase over proposed FMR levels is warranted will be given higher FMRs in the final FMR publication.

Areas With FMRs Based on Local RDD Survey Data

HUD uses RDD telephone surveys to obtain statistically reliable FMR estimates for selected areas. The RDD technique involves use of large, randomly selected samples to obtain data on current rents paid for one- and two-bedroom rental units occupied by recent movers. Both one- and two-bedroom units are used because there usually are consistent relationships between one- and two-bedroom rents in local housing markets, and use of data on one-bedroom rents can be used to improve the accuracy of two-bedroom FMR estimates. One-bedroom survey rents are converted into two-bedroom equivalent rents using the average Census differential between one- and two-bedroom rents.

RDD surveys exclude public housing units, newly built units and non-cash rental units. They do not exclude substandard units because there is no practical way to determine housing quality from telephone interviews. Such surveys, however, also exclude units without a telephone, and past analysis has shown that the slightly downward rent estimate bias caused by including some substandard units is almost exactly offset by the slightly upward bias that results from only surveying units with telephones. This relationship held true across a variety of areas.

RDD surveys that meet HUD criteria have a high degree of statistical accuracy. There is a 95 percent likelihood that the 40th or 50th percentile recent mover contract rent estimates developed using this approach are within three to four percent of the actual 40th or 50th percentile. Virtually all of the estimates will be within five percent of the actual 40th or 50th percentile value.

A number of RDD surveys were conducted after the 2000 Census. Approximately one-half of these could not be used because of large changes in the OMB-defined geographic area. Of the areas which did not change or changed very little under the new OMB definitions, RDD survey results are used to replace FMR estimates rebenchmarked using the 2000 Census only when the Census-based estimate is outside the 95 percent confidence interval of the RDD survey estimate (*i.e.*, there is only a five percent likelihood that the Census-based estimate is correct). For areas where the RDD survey results are determined to have a statistically significant difference, RDD surveys are used to provide a rebenchmarked FMR instead of the Census. These estimates are updated in essentially the same manner as Census estimates.

The proposed FMRs include RDD surveys completed in 2001 and 2002. Survey results for surveys conducted in 2000 produced contract rent estimates very similar to the Census estimates, so they are not used. The survey estimate confidence intervals are partly dependent on the FMR standard

selected. The RDD surveys used in place of Census data for Schedule B(1) were for the following areas:

2001 Surveys: Muncie, IN; New Orleans, LA; Orlando, FL; Riverside, CA; San Jose, CA; Payne County, OK; Jackson County, NC; McDowell County, NC; and Polk County, NC.

2002 Surveys: Baltimore, MD; Jacksonville, FL; Pittsburgh, PA; Norfolk, VA; St. Louis, MO; and Salinas, CA.

The RDD surveys used in place of Census-based estimates for Schedule B(2) were for the following areas:

2001 Surveys: Buffalo, NY; Minneapolis, MN; and San Jose, CA.

2002 Surveys: Norfolk, VA and St. Louis, MO.

Areas With FMRs Based on AHS Data

HUD used AHS data to calculate rents from the distributions of two-bedroom units occupied by recent movers. Public housing units, newly constructed units, and units that fail a housing quality test are excluded from the rental housing distributions before the FMRs are calculated.

Thirteen areas were covered by AHS surveys conducted in 2002. Two of these surveys could not be used because of differences in AHS and new OMB metropolitan area definitions. Another two surveys did not have enough recent mover cases to provide reliable estimates. More current AHS results were used to replace FMR estimates based on Census or RDD survey data if the Census- or RDD-based estimate was outside the 95 percent confidence interval of the AHS estimate. The AHS results produced statistically different FMR estimates and were used to rebenchmark FMRs for the following areas in Schedule B(1): Dallas, TX; Phoenix, AZ; Portland, OR; and Santa Ana, CA.

Dallas and Phoenix are 50th percentile FMR areas and the AHS rent was also used to rebenchmark the FMR for these two areas at the 40th percentile rent shown in Schedule B(2).

Manufactured Home Space Rents

Manufactured home space rents are set at 40 percent of the two-bedroom rent. Exceptions to this rent are granted when justified by survey data. All approved exceptions to these rents that were in effect in FY2004 were updated to 2005 using the relevant update factor. If the result of this computation was higher than 40 percent of the rebenchmarked two-bedroom rent, the exception remains and is listed in Schedule D.

VI. Request for Comments

HUD seeks public comments on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the unit-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

For the supporting data, HUD recommends the use of professionally conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of approximately $20,000 to $30,000. Areas with 500 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual rents for two-bedroom units are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of $5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties whose FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR above the combined rent level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain the guide entitled "Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments." These guides are available from HUD USER on (800) 245–2691, or from HUD's Web site, in Microsoft Word or Adobe Acrobat format, at the following address: *http://www.huduser.org/datasets/fmr.html.*

Other survey methodologies are acceptable in providing data to support comments, if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys cover only one- and two-bedroom units, which has statistical advantages. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the decennial Census. A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations HUD is prepared to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as shown in the Appendix to this notice:

Dated: July 30, 2004.

Alphonso Jackson,

Secretary.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Area FMRs—FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic

area in which rental-housing units are in direct competition.

b. Nonmetropolitan Area FMRs—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands.

c. Virginia Independent Cities—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B(1) includes only the name of the nonmetropolitan county. The full definitions of these areas, including the independent cities, are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Clifton Forge and Covington.
Carroll	Galax.
Greensville	Emporia
Rockbridge	Buena Vista and Lexington.
Southhampton	Franklin
Wise	Norton

2. Bedroom Size Adjustments

Schedule B(1) shows the FMRs for zero-bedroom through four-bedroom units. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B(1) are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception rent FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

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SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Anniston-Oxford, AL	336	371	461	609	716	Calhoun
Auburn-Opelika, AL	332	396	510	671	672	Lee
Birmingham-Hoover, AL	456	507	564	716	726	Bibb, Blount, Chilton, Jefferson, St. Clair, Shelby, Walker
Columbus, GA-AL	442	466	533	707	839	Russell
Decatur, AL	367	412	474	620	643	Lawrence, Morgan
Dothan, AL	310	384	437	556	636	Geneva, Henry, Houston
Florence-Muscle Shoals, AL	387	389	472	602	746	Colbert, Lauderdale
Gadsden, AL	306	387	470	602	603	Etowah
Huntsville, AL	407	443	523	716	786	Limestone, Madison
Mobile, AL	457	488	552	722	854	Mobile
Montgomery, AL	437	517	581	772	1019	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL	380	439	569	731	733	Greene, Hale, Tuscaloosa

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albertville, AL	374	401	452	610	672	Marshall
Alexander City, AL	338	353	416	603	714	Coosa, Tallapoosa
Cullman, AL	368	379	444	597	599	Cullman
Daphne-Fairhope, AL	423	508	605	801	918	Baldwin
Enterprise-Ozark, AL	329	378	421	590	741	Coffee, Dale
Eufaula, AL-GA	352	353	424	520	535	Barbour
Fort Payne, AL	314	334	421	560	561	DeKalb
Scottsboro, AL	334	362	402	512	706	Jackson
Selma, AL	281	390	433	546	586	Dallas
Talladega-Sylacauga, AL	358	359	430	580	758	Talladega
Troy, AL	314	338	394	506	507	Pike
Tuskegee, AL	315	339	437	583	585	Macon
Valley, AL	337	366	406	551	552	Chambers

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bullock	313	354	434	520	560
Cherokee	369	370	445	530	546
Clarke	274	379	422	505	742
Cleburne	355	356	427	523	651
Covington	336	337	404	551	552
Escambia	336	341	405	505	621
Franklin	262	339	402	542	706
Marengo	346	368	417	540	541
Monroe	326	354	393	544	601
Pickens	258	320	385	514	675
Sumter	258	329	385	514	675
Wilcox	325	343	392	497	664

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Butler	313	354	434	520	560
Choctaw	325	343	392	497	664
Clay	352	353	423	523	651
Conecuh	325	343	392	497	664
Crenshaw	313	354	434	520	560
Fayette	235	272	358	522	630
Lamar	258	320	385	514	675
Marion	259	303	399	507	701
Perry	346	368	417	540	541
Randolph	352	353	423	523	651
Washington	325	343	392	497	664
Winston	264	301	396	474	488

ALASKA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Anchorage, AK	612	697	873	1257	1534	Anchorage, Matanuska-Susitna

ALASKA continued						
Fairbanks, AK	528	633	810	1172	1240	Fairbanks North Star

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Juneau, AK	665	815	1025	1385	1726	Juneau
Ketchikan, AK	587	749	900	1311	1580	Ketchikan Gateway
Kodiak, AK	628	735	967	1390	1471	Kodiak Island

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	639	741	939	1161	1162
Bethel	746	934	1134	1356	1991
Denali	550	679	848	1191	1341
Haines	550	679	848	1191	1341
Lake and Peninsula	639	741	939	1161	1162
North Slope	672	786	1033	1235	1269
Prince of Wales-Outer Ketch	639	741	939	1161	1162
Skagway-Hoonah-Angoon	639	741	939	1161	1162
Valdez-Cordova	550	679	848	1191	1341
Wrangell-Petersburg	639	741	939	1161	1162
Yukon-Koyukuk	639	741	939	1161	1162

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians West	639	741	939	1161	1162
Bristol Bay	639	741	939	1161	1162
Dillingham	639	741	939	1161	1162
Kenai Peninsula	492	562	684	937	1201
Nome	640	839	963	1162	1183
Northwest Arctic	639	741	939	1161	1162
Sitka	625	721	860	1253	1509
Southeast Fairbanks	550	679	848	1191	1341
Wade Hampton	639	741	939	1161	1162
Yakutat	639	741	939	1161	1162

ARIZONA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Flagstaff, AZ	653	777	878	1129	1424	Coconino
Phoenix-Mesa-Scottsdale, AZ*	539	628	760	1106	1320	Maricopa, Pinal
Prescott, AZ	548	565	714	1041	1042	Yavapai
Tucson, AZ	472	554	712	1025	1083	Pima
Yuma, AZ	461	544	650	922	1130	Yuma

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Lake Havasu City-Kingman, AZ	480	529	617	854	950	Mohave
Nogales, AZ	475	476	603	879	880	Santa Cruz
Payson, AZ	433	507	667	916	917	Gila
Safford, AZ	430	474	535	717	866	Graham, Greenlee
Sierra Vista-Douglas, AZ	397	460	577	797	979	Cochise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	337	413	488	677	858
Navajo	404	432	570	768	910
La Paz	461	462	554	784	785

ARKANSAS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Fayetteville-Springdale-Rogers, AR-MO	409	431	538	785	795	Benton, Madison, Washington
Fort Smith, AR-OK	325	368	459	614	670	Crawford, Franklin, Sebastian
Hot Springs, AR	350	433	539	673	674	Garland
Jonesboro, AR	395	416	476	658	659	Craighead, Poinsett
Little Rock-North Little Rock, AR	452	514	573	768	769	Faulkner, Grant, Lonoke, Perry, Pulaski, Saline

ARKANSAS continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Memphis, TN-MS-AR	512	556	618	824	829	Crittenden
Pine Bluff, AR	345	408	512	614	727	Cleveland, Jefferson, Lincoln
Texarkana, TX-Texarkana, AR	410	414	510	622	677	Miller

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Arkadelphia, AR	353	358	461	594	595	Clark
Batesville, AR	308	367	443	573	622	Independence
Blytheville, AR	313	349	457	603	727	Mississippi
Camden, AR	245	340	378	523	609	Calhoun, Ouachita
El Dorado, AR	379	399	456	591	767	Union
Forrest City, AR	376	390	455	642	797	St. Francis
Harrison, AR	367	371	441	573	659	Boone, Newton
Hope, AR	299	385	459	549	626	Hempstead, Nevada
Magnolia, AR	292	375	449	551	631	Columbia
Mountain Home, AR	341	396	479	644	812	Baxter
Paragould, AR	287	400	443	648	649	Greene
Russellville, AR	346	360	458	607	608	Pope, Yell
Searcy, AR	380	381	458	622	623	White
West Helena, AR	329	332	397	517	518	Phillips

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	319	336	418	607	608
Bradley	320	325	430	533	565
Chicot	320	325	430	533	565
Cleburne	402	403	483	662	850
Cross	372	373	448	653	713
Desha	320	325	430	547	565
Fulton	340	341	427	561	626
Howard	292	339	382	492	495
Jackson	247	324	367	518	519
Lafayette	350	400	460	550	658
Lee	299	338	421	561	652
Logan	260	336	400	572	640
Monroe	361	362	434	544	545
Pike	350	400	460	550	658
Prairie	361	362	434	544	545
Scott	310	311	373	516	654
Sevier	332	342	398	550	637
Stone	340	341	427	561	626
Woodruff	361	362	434	544	545

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	345	357	469	562	618
Carroll	389	390	468	590	822
Clay	301	303	374	479	510
Conway	359	370	432	595	647
Dallas	278	386	430	548	697
Drew	268	344	413	519	724
Hot Spring	364	365	437	573	574
Izard	340	341	427	561	626
Johnson	282	387	435	580	693
Lawrence	258	316	396	487	644
Little River	350	400	460	561	658
Marion	342	343	412	542	597
Montgomery	343	401	505	635	636
Polk	335	363	403	524	637
Randolph	275	344	423	506	742
Searcy	371	373	447	577	648
Sharp	361	362	434	553	554
Van Buren	275	321	423	524	676

CALIFORNIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bakersfield, CA	470	507	604	873	1046	Kern
Chico, CA	457	544	656	925	1104	Butte
El Centro, CA	467	529	652	897	1143	Imperial
Fresno, CA	487	538	633	923	992	Fresno

CALIFORNIA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Hanford-Corcoran, CA	493	523	606	885	1067	Kings
Los Angeles-Long Beach-Glendale, CA, Division	671	809	1011	1358	1634	Los Angeles
Madera, CA	495	520	662	965	967	Madera
Merced, CA	444	506	615	877	1024	Merced
Modesto, CA	546	603	710	1018	1176	Stanislaus
Napa, CA	758	848	1102	1525	1733	Napa
Oakland-Fremont-Hayward, CA, Division*	945	1132	1342	1870	2293	Alameda, Contra Costa
Oxnard-Thousand Oaks-Ventura, CA*	896	994	1257	1829	2109	Ventura
Redding, CA	449	523	636	928	1118	Shasta
Riverside-San Bernardino-Ontario, CA	573	631	744	1045	1218	Riverside, San Bernardino
Sacramento--Arden-Arcade--Roseville, CA*	626	714	851	1240	1444	El Dorado, Placer, Sacramento, Yolo
Salinas, CA	801	901	1035	1462	1532	Monterey
San Diego-Carlsbad-San Marcos, CA*	854	975	1183	1725	2080	San Diego
San Francisco-San Mateo-Redwood City, CA, Division	1165	1431	1792	2392	2529	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA*	1253	1472	1739	2350	2592	San Benito, Santa Clara
San Luis Obispo-Paso Robles, CA	620	733	893	1301	1302	San Luis Obispo
Santa Ana-Anaheim-Irvine, CA, Division*	1042	1170	1403	2008	2306	Orange
Santa Barbara-Santa Maria-Goleta, CA	801	895	1004	1322	1509	Santa Barbara
Santa Cruz-Watsonville, CA	876	1033	1347	1939	1979	Santa Cruz
Santa Rosa-Petaluma, CA	751	914	1154	1638	1914	Sonoma
Stockton, CA	522	595	734	1008	1269	San Joaquin
Vallejo-Fairfield, CA	799	859	987	1384	1705	Solano
Visalia-Porterville, CA	465	520	605	865	876	Tulare
Yuba City, CA	423	477	587	854	914	Sutter, Yuba

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bishop, CA	435	456	593	864	1019	Inyo
Clearlake, CA	435	510	664	962	1071	Lake
Crescent City, CA	474	480	621	904	905	Del Norte
Eureka-Arcata-Fortuna, CA	440	515	678	972	1077	Humboldt
Phoenix Lake-Cedar Ridge, CA	469	557	720	995	996	Tuolumne
Red Bluff, CA	394	448	585	850	1021	Tehama
Susanville, CA	423	496	652	948	974	Lassen
Truckee-Grass Valley, CA	545	636	838	1210	1472	Nevada
Ukiah, CA	486	600	729	995	1279	Mendocino

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	482	541	690	984	1009
Calaveras	530	531	638	930	1026
Glenn	414	425	559	727	747
Modoc	420	464	607	865	877
Plumas	431	505	665	970	1168
Siskiyou	376	451	577	821	837
Amador	519	609	799	1161	1162
Colusa	484	486	632	816	1109
Mariposa	482	541	690	984	1009
Mono	567	683	872	1195	1532
Sierra	510	595	785	1112	1377
Trinity	427	448	588	807	895

COLORADO

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Boulder, CO	703	815	1022	1490	1786	Boulder

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Colorado Springs, CO	519	582	735	1049	1241	El Paso, Teller
Denver-Aurora, CO*	674	768	973	1382	1610	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO	516	619	750	1092	1273	Larimer
Grand Junction, CO	468	469	563	820	991	Mesa
Greeley, CO	489	517	636	925	1092	Weld
Pueblo, CO	441	464	610	799	904	Pueblo

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Canon City, CO	375	448	575	825	946	Fremont
Durango, CO	517	631	722	1013	1153	La Plata
Edwards, CO	698	817	1075	1286	1681	Eagle, Lake
Fort Morgan, CO	449	486	542	722	872	Morgan
Montrose, CO	398	522	605	803	995	Montrose
Silverthorne, CO	684	804	1051	1497	1844	Summit
Sterling, CO	405	406	517	673	779	Logan

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	345	427	474	644	833
Baca	351	412	459	655	656
Chaffee	393	496	604	880	881
Conejos	351	412	459	655	656
Crowley	397	410	499	654	804
Delta	462	472	556	763	765
Garfield	599	682	756	933	934
Gunnison	485	533	693	959	1217
Huerfano	351	412	459	655	656
Kiowa	397	410	499	654	804
Las Animas	355	471	522	673	674
Mineral	590	746	901	1122	1581
Montezuma	413	483	558	666	890
Ouray	590	746	901	1122	1581
Pitkin	825	964	1269	1763	2228
Rio Blanco	492	607	674	869	934
Routt	609	721	937	1121	1645
San Juan	468	559	642	850	1097
Sedgwick	397	410	499	654	804
Yuma	397	410	499	654	804

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	467	555	698	849	1096
Bent	397	410	499	654	804
Cheyenne	397	410	499	654	804
Costilla	351	412	459	655	656
Custer	420	491	647	906	1042
Dolores	468	555	642	850	1097
Grand	469	536	681	991	992
Hinsdale	590	746	901	1122	1581
Jackson	492	607	674	869	934
Kit Carson	397	410	499	654	804
Lincoln	397	410	499	654	804
Moffat	380	415	521	683	915
Otero	355	375	455	630	631
Phillips	397	410	499	654	804
Prowers	345	405	450	610	791
Rio Grande	351	412	459	666	667
Saguache	351	412	459	655	656
San Miguel	636	763	975	1422	1424
Washington	397	410	499	654	804

CONNECTICUT

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bridgeport-Stamford-Norwalk, CT	787	950	1100	1316	1725	Fairfield
Hartford-West Hartford-East Hartford, CT	554	660	817	974	1159	Hartford, Middlesex, Tolland
New Haven-Milford, CT	628	729	858	1032	1108	New Haven
Norwich-New London, CT	569	676	782	957	1056	New London

CONNECTICUT continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Torrington, CT	513	669	788	1014	1139	Litchfield
Willimantic, CT	464	572	690	868	921	Windham

DELAWARE

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Dover, DE	511	556	616	806	1082	Kent
Wilmington, DE-MD-NJ, Division	647	679	800	1050	1195	New Castle

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Seaford, DE	473	514	572	782	792	Sussex

DISTRICT OF COLUMBIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division*	872	992	1124	1445	1919	District of Columbia

FLORIDA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Cape Coral-Fort Myers, FL	575	621	707	961	962	Lee
Deltona-Daytona Beach-Ormond Beach, FL	470	548	682	883	884	Volusia
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL, Division*	743	830	998	1380	1752	Broward
Fort Walton Beach-Crestview-Destin, FL	463	542	610	890	977	Okaloosa
Gainesville, FL	484	534	609	889	890	Alachua, Gilchrist
Jacksonville, FL	552	628	732	918	1052	Baker, Clay, Duval, Nassau, St. Johns
Lakeland, FL	437	482	555	704	826	Polk
Miami-Miami Beach-Kendall, FL, Division*	682	775	929	1204	1419	Miami-Dade
Naples-Marco Island, FL	649	743	837	1040	1083	Collier
Ocala, FL	463	477	560	735	736	Marion
Orlando, FL	675	733	838	1049	1235	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL	456	558	657	885	987	Brevard
Panama City-Lynn Haven, FL	478	504	577	797	886	Bay
Pensacola-Ferry Pass-Brent, FL	466	507	563	816	987	Escambia, Santa Rosa
Port St. Lucie-Fort Pierce, FL	540	541	686	907	908	Martin, St. Lucie
Punta Gorda, FL	482	505	655	956	1151	Charlotte
Sarasota-Bradenton-Venice, FL	554	616	746	917	1046	Manatee, Sarasota
Tallahassee, FL	487	540	668	889	890	Gadsden, Jefferson, Leon, Wakulla
Tampa-St. Petersburg-Clearwater, FL*	597	669	805	1037	1264	Hernando, Hillsborough, Pasco, Pinellas
Vero Beach, FL	444	536	684	852	853	Indian River
West Palm Beach-Boca Raton-Boynton Beach, FL, Division*	686	804	946	1340	1373	Palm Beach

FLORIDA continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Arcadia, FL	407	417	490	591	601	DeSoto
Clewiston, FL	387	463	516	620	765	Hendry
Homosassa Springs, FL	413	449	497	721	868	Citrus
Key West-Marathon, FL	646	787	969	1410	1510	Monroe
Lake City, FL	360	416	492	614	863	Columbia
Okeechobee, FL	436	451	525	707	708	Okeechobee
Palatka, FL	365	396	440	528	540	Putnam
Palm Coast, FL	496	572	720	1007	1074	Flagler
Sebring, FL	438	440	527	682	815	Highlands
The Villages, FL	346	376	418	549	734	Sumter
Wauchula, FL	407	442	490	601	602	Hardee

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	299	415	460	570	571	Calhoun	385	386	462	582	664
Dixie	335	366	406	488	565	Franklin	386	387	464	584	665
Glades	427	455	517	631	674	Gulf	385	386	462	582	664
Hamilton	335	366	406	488	565	Holmes	369	392	445	579	580
Jackson	294	377	420	520	607	Lafayette	335	366	406	488	565
Levy	359	385	433	553	554	Liberty	385	386	462	582	664
Madison	385	386	462	582	664	Suwannee	270	367	407	513	562
Taylor	394	427	475	568	581	Union	359	413	464	614	619
Walton	432	445	521	644	645	Washington	277	315	416	596	597

GEORGIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albany, GA	415	444	519	698	699	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA	445	495	621	827	828	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA*	765	829	923	1140	1281	Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC	448	486	546	730	770	Burke, Columbia, McDuffie, Richmond
Brunswick, GA	417	454	503	716	885	Brantley, Glynn, McIntosh
Chattanooga, TN-GA	456	482	568	699	823	Catoosa, Dade, Walker
Columbus, GA-AL	442	466	533	707	839	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA	423	459	511	632	633	Murray, Whitfield
Gainesville, GA	607	636	731	900	1042	Hall
Hinesville-Fort Stewart, GA	421	458	508	716	813	Liberty, Long
Macon, GA	438	474	525	649	676	Bibb, Crawford, Jones, Monroe, Twiggs

GEORGIA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Rome, GA	401	409	527	646	647	Floyd
Savannah, GA	545	590	657	872	875	Bryan, Chatham, Effingham
Valdosta, GA	428	429	517	702	703	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA	477	486	576	837	963	Houston

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Americus, GA	347	391	472	565	829	Schley, Sumter
Bainbridge, GA	329	383	504	603	670	Decatur
Calhoun, GA	433	436	560	670	689	Gordon
Cedartown, GA	364	405	494	609	610	Polk
Cordele, GA	341	344	411	519	520	Crisp
Cornelia, GA	437	439	526	630	923	Habersham
Douglas, GA	333	343	401	505	630	Atkinson, Coffee
Dublin, GA	354	385	426	569	701	Johnson, Laurens
Eufaula, AL-GA	352	353	424	520	535	Quitman
Fitzgerald, GA	294	368	409	512	513	Ben Hill, Irwin
Fort Valley, GA	403	404	486	696	731	Peach
Jesup, GA	298	337	416	549	730	Wayne
LaGrange, GA	426	431	540	683	695	Troup
Milledgeville, GA	345	413	501	604	615	Baldwin, Hancock
Moultrie, GA	351	379	422	505	635	Colquitt
St. Marys, GA	457	458	552	803	969	Camden
Statesboro, GA	409	423	501	601	615	Bulloch
Summerville, GA	279	341	428	513	747	Chattooga
Thomaston, GA	312	423	481	575	591	Upson
Thomasville, GA	406	440	489	628	858	Thomas
Tifton, GA	385	417	462	590	682	Tift
Toccoa, GA	296	411	456	546	560	Stephens
Vidalia, GA	250	345	384	523	607	Montgomery, Toombs
Waycross, GA	346	366	417	533	646	Pierce, Ware

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	359	390	433	528	531
Banks	383	415	460	559	794
Bleckley	292	341	416	515	575
Candler	359	390	433	528	531
Clay	323	350	389	499	613
Cook	332	339	400	544	703
Dooly	354	366	426	537	725
Elbert	363	379	437	549	550
Evans	359	390	433	528	531
Franklin	383	415	460	559	794
Glascock	291	308	406	486	571
Greene	363	379	437	549	550
Jackson	458	497	553	672	877
Jefferson	291	324	406	486	571
Lincoln	363	379	437	549	550
Macon	354	366	426	537	725
Mitchell	279	354	428	513	712

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bacon	334	346	402	512	583
Berrien	346	347	422	523	524
Calhoun	323	350	389	499	613
Charlton	334	346	402	512	583
Clinch	334	346	402	512	583
Dodge	292	293	370	495	504
Early	323	350	389	499	613
Emanuel	254	295	389	474	606
Fannin	299	416	461	552	662
Gilmer	433	469	523	690	833
Grady	249	344	383	531	533
Hart	364	394	438	523	768
Jeff Davis	359	390	433	528	531
Jenkins	291	308	406	486	571
Lumpkin	389	505	600	810	898
Miller	334	386	445	557	664
Morgan	398	399	492	589	605

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pulaski	292	341	385	560	574	Putnam	291	294	386	561	563
Rabun	435	451	524	676	815	Randolph	323	350	389	499	613
Screven	291	308	406	486	571	Seminole	334	386	445	557	664
Stewart	323	350	389	499	613	Talbot	425	426	514	633	644
Taliaferro	363	379	437	549	550	Tattnall	290	313	348	459	502
Taylor	354	366	426	537	725	Telfair	292	341	385	515	574
Towns	435	451	524	673	815	Treutlen	292	341	385	515	574
Turner	354	375	426	540	659	Union	435	451	524	673	815
Warren	363	379	437	549	550	Washington	291	334	406	496	571
Webster	354	366	426	537	725	Wheeler	292	341	385	515	574
White	389	485	539	680	819	Wilcox	292	341	385	515	574
Wilkes	363	379	437	549	550	Wilkinson	334	409	456	589	615

HAWAII

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Honolulu, HI	668	783	955	1386	1550	Honolulu

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Hilo, HI	513	616	691	974	1068	Hawaii
Kahului-Wailuku, HI	698	773	899	1203	1288	Maui
Kapaa, HI	560	630	831	1043	1135	Kauai

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kalawao	655	756	888	1122	1278						

IDAHO

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Boise City-Nampa, ID	465	551	650	946	1007	Ada, Boise, Canyon, Gem, Owyhee
Coeur d'Alene, ID	469	504	607	885	988	Kootenai
Idaho Falls, ID	396	421	535	733	921	Bonneville, Jefferson
Lewiston, ID-WA	414	430	538	765	929	Nez Perce
Logan, UT-ID	427	459	575	770	952	Franklin
Pocatello, ID	340	396	510	738	863	Bannock, Power

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Blackfoot, ID	343	380	487	670	686	Bingham
Burley, ID	304	391	466	620	741	Cassia, Minidoka
Jackson, WY-ID	645	711	856	1148	1149	Teton
Moscow, ID	405	423	511	745	862	Latah
Mountain Home, ID	343	400	526	667	817	Elmore
Ontario, OR-ID	366	417	520	697	735	Payette
Rexburg, ID	361	362	467	679	726	Fremont, Madison
Twin Falls, ID	361	438	556	722	800	Jerome, Twin Falls

IDAHO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	396	413	520	704	839
Benewah	456	464	583	833	837
Bonner	461	483	593	839	840
Butte	377	403	512	728	865
Caribou	339	390	499	705	818
Clearwater	404	417	517	746	861
Gooding	395	442	551	726	777
Lemhi	377	403	512	728	865
Lincoln	395	442	551	726	777
Shoshone	391	392	473	623	660
Washington	396	413	520	704	839

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bear Lake	339	390	499	705	818
Blaine	659	716	795	1129	1394
Boundary	456	464	583	833	837
Camas	395	442	551	726	777
Clark	377	403	512	728	865
Custer	377	403	512	728	865
Idaho	394	422	556	665	786
Lewis	404	417	517	746	861
Oneida	339	390	499	705	818
Valley	396	413	520	704	839

ILLINOIS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bloomington-Normal, IL	439	485	612	818	1023	McLean
Champaign-Urbana, IL	420	510	599	753	1034	Champaign, Ford, Piatt
Chicago-Naperville-Joliet, IL, Division*	707	820	919	1114	1271	Cook, DeKalb, DuPage, Grundy, Kane, Kendall, McHenry, Will
Danville, IL	331	399	511	612	647	Vermilion
Davenport-Moline-Rock Island, IA-IL	401	447	563	718	747	Henry, Mercer, Rock Island
Decatur, IL	346	412	523	697	698	Macon
Kankakee-Bradley, IL	460	501	661	857	919	Kankakee
Lake County-Kenosha County, IL-WI, Division	649	715	873	1110	1289	Lake
Peoria, IL	390	460	573	738	839	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL	423	477	605	789	792	Boone, Winnebago
St. Louis, MO-IL*	546	596	741	966	1032	Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe, St. Clair
Springfield, IL	373	439	567	740	826	Menard, Sangamon

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Burlington, IA-IL	377	409	517	619	735	Henderson
Canton, IL	319	381	459	587	728	Fulton
Cape Girardeau-Jackson, MO-IL	330	383	505	649	822	Alexander
Carbondale, IL	325	397	500	681	847	Jackson
Centralia, IL	329	377	451	577	635	Marion
Charleston-Mattoon, IL	333	425	507	710	890	Coles, Cumberland
Dixon, IL	346	425	511	682	794	Lee
Effingham, IL	423	424	510	644	681	Effingham
Freeport, IL	361	422	556	665	683	Stephenson
Galesburg, IL	329	384	506	633	678	Knox, Warren
Harrisburg, IL	270	348	415	562	728	Saline
Jacksonville, IL	329	384	506	636	722	Morgan, Scott
Lincoln, IL	411	412	493	677	776	Logan
Macomb, IL	321	378	476	610	798	McDonough
Marion-Herrin, IL	311	363	476	686	687	Williamson
Mount Vernon, IL	392	416	472	617	618	Hamilton, Jefferson
Ottawa-Streator, IL	361	422	556	692	879	Bureau, La Salle, Putnam

ILLINOIS continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Paducah, KY-IL	312	384	470	631	632	Massac
Pontiac, IL	357	438	551	658	685	Livingston
Quincy, IL-MO	307	366	473	619	642	Adams
Rochelle, IL	409	435	572	747	800	Ogle
Sterling, IL	368	433	534	661	669	Whiteside
Taylorville, IL	308	395	472	610	713	Christian

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Brown	294	360	454	608	609	Carroll	365	412	519	646	647
Cass	364	366	461	586	604	Clark	299	417	462	672	674
Clay	272	339	415	554	555	Crawford	275	325	422	555	582
De Witt	395	396	483	631	738	Douglas	325	408	501	713	714
Edgar	305	357	469	590	592	Edwards	340	343	418	546	605
Fayette	369	379	445	616	617	Franklin	295	362	456	566	800
Gallatin	340	343	418	546	605	Greene	331	369	485	613	644
Hancock	367	368	440	529	547	Hardin	340	343	418	546	605
Iroquois	346	384	465	585	686	Jasper	272	339	415	554	555
Jo Daviess	361	387	460	613	622	Johnson	340	343	418	546	605
Lawrence	279	327	430	572	573	Mason	294	373	454	608	609
Montgomery	389	390	468	561	695	Moultrie	320	378	492	620	753
Perry	281	367	433	523	672	Pike	294	360	454	608	609
Pope	340	343	418	546	605	Pulaski	340	343	418	546	605
Randolph	302	352	464	615	754	Richland	318	385	427	588	704
Schuyler	294	360	454	608	609	Shelby	395	396	476	620	702
Union	361	362	434	532	661	Wabash	340	344	418	546	605
Washington	331	379	478	614	615	Wayne	247	300	381	485	486
White	340	343	418	546	605						

INDIANA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Anderson, IN	476	477	574	737	767	Madison
Bloomington, IN	449	513	609	854	917	Greene, Monroe, Owen
Cincinnati-Middletown, OH-KY-IN	418	496	643	861	894	Dearborn, Franklin, Ohio
Columbus, IN	550	552	663	811	869	Bartholomew
Elkhart-Goshen, IN	455	507	627	788	826	Elkhart
Evansville, IN-KY	365	426	530	655	710	Gibson, Posey, Vanderburgh, Warrick
Fort Wayne, IN	436	463	579	721	728	Allen, Wells, Whitley
Gary, IN, Division	469	579	709	846	870	Jasper, Lake, Newton, Porter
Indianapolis, IN	479	555	661	851	901	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Putnam, Shelby
Kokomo, IN	459	464	589	751	752	Howard, Tipton
Lafayette, IN	456	541	662	862	986	Benton, Carroll, Tippecanoe
Louisville, KY-IN	411	472	561	784	832	Clark, Floyd, Harrison, Washington
Michigan City-La Porte, IN	424	489	622	826	833	LaPorte
Muncie, IN	473	484	585	788	827	Delaware

INDIANA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
South Bend-Mishawaka, IN-MI	454	505	607	781	789	St. Joseph
Terre Haute, IN	352	401	516	637	731	Clay, Sullivan, Vermillion, Vigo

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Angola, IN	412	470	618	745	761	Steuben
Auburn, IN	408	435	553	759	761	DeKalb
Bedford, IN	359	424	553	661	678	Lawrence
Connersville, IN	338	418	519	687	688	Fayette
Crawfordsville, IN	364	429	546	743	783	Montgomery
Decatur, IN	379	411	456	595	703	Adams
Frankfort, IN	439	466	569	710	745	Clinton
Greensburg, IN	476	478	574	744	745	Decatur
Huntington, IN	386	461	544	679	823	Huntington
Jasper, IN	320	398	493	642	643	Dubois, Pike
Kendallville, IN	485	486	584	698	717	Noble
Logansport, IN	358	386	507	646	647	Cass
Madison, IN	367	393	518	620	767	Jefferson
Marion, IN	432	433	523	660	770	Grant
New Castle, IN	448	450	539	693	775	Henry
North Vernon, IN	356	420	549	665	915	Jennings
Peru, IN	320	376	493	718	774	Miami
Plymouth, IN	391	451	560	738	739	Marshall
Richmond, IN	353	416	521	707	708	Wayne
Scottsburg, IN	375	418	528	682	790	Scott
Seymour, IN	461	462	562	722	876	Jackson
Vincennes, IN	324	369	466	577	720	Knox
Wabash, IN	308	359	472	645	735	Wabash
Warsaw, IN	374	437	574	730	850	Kosciusko
Washington, IN	365	367	439	571	700	Daviess

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blackford	421	423	507	645	697
Fountain	346	416	471	630	659
Jay	302	370	465	630	631
Martin	326	359	457	546	658
Parke	406	408	488	615	774
Pulaski	426	427	514	682	683
Ripley	471	472	569	685	784
Spencer	320	378	492	635	648
Switzerland	389	422	555	695	775
Warren	351	431	540	664	771

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crawford	350	399	491	604	641
Fulton	421	437	507	716	717
LaGrange	455	456	547	659	732
Orange	298	350	461	580	633
Perry	316	370	486	631	632
Randolph	388	389	467	666	667
Rush	445	446	536	642	704
Starke	427	451	516	682	717
Union	349	426	538	670	682
White	374	517	574	686	969

IOWA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Ames, IA	493	521	644	921	1089	Story
Cedar Rapids, IA	378	441	580	822	934	Benton, Jones, Linn

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

IOWA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Davenport-Moline-Rock Island, IA-IL	401	447	563	718	747	Scott
Des Moines, IA	450	537	654	839	935	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA	364	392	515	692	754	Dubuque
Iowa City, IA	431	508	640	932	1038	Johnson, Washington
Omaha-Council Bluffs, NE-IA	457	520	648	864	873	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD	379	444	584	735	736	Woodbury
Waterloo-Cedar Falls, IA	364	450	537	659	807	Black Hawk, Bremer, Grundy

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Boone, IA	363	438	558	726	782	Boone
Burlington, IA-IL	377	409	517	619	735	Des Moines
Clinton, IA	316	370	487	621	709	Clinton
Fort Dodge, IA	371	378	491	679	680	Webster
Keokuk-Fort Madison, IA-MO	345	397	458	579	630	Lee
Marshalltown, IA	372	431	538	692	794	Marshall
Mason City, IA	364	398	524	649	702	Cerro Gordo, Worth
Muscatine, IA	379	456	551	686	743	Louisa, Muscatine
Newton, IA	379	414	544	692	722	Jasper
Oskaloosa, IA	360	408	520	623	822	Mahaska
Ottumwa, IA	348	405	534	637	664	Wapello
Pella, IA	363	446	557	688	689	Marion
Spencer, IA	298	348	459	557	698	Clay
Spirit Lake, IA	311	384	480	607	842	Dickinson
Storm Lake, IA	379	383	501	601	690	Buena Vista

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	332	370	486	593	663
Allamakee	316	348	446	578	615
Audubon	334	343	447	588	615
Butler	316	348	446	578	615
Carroll	331	386	509	607	625
Cedar	344	380	501	648	701
Chickasaw	316	348	446	578	615
Clayton	316	348	446	578	615
Davis	332	370	486	593	663
Delaware	344	380	501	648	701
Fayette	316	348	446	578	615
Franklin	327	359	453	579	607
Greene	334	343	447	588	615
Hancock	327	359	453	579	607
Henry	410	412	493	705	706
Humboldt	373	374	471	605	633
Iowa	368	398	494	646	659
Jefferson	407	414	490	617	750
Kossuth	327	359	453	579	607
Lyon	300	342	451	549	648
Monona	334	343	447	588	615

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	332	370	486	593	663
Appanoose	296	346	456	576	631
Buchanan	375	376	452	583	584
Calhoun	373	374	471	605	633
Cass	363	443	557	683	735
Cherokee	334	343	447	588	615
Clarke	331	378	497	595	663
Crawford	334	353	447	588	615
Decatur	332	370	486	593	663
Emmet	300	342	451	549	648
Floyd	322	348	459	574	575
Fremont	363	443	557	683	735
Hamilton	373	374	480	605	632
Hardin	416	418	500	598	636
Howard	316	348	446	578	615
Ida	334	343	447	588	615
Jackson	344	380	501	648	701
Keokuk	332	370	486	593	663
Lucas	332	370	486	593	663
Mitchell	327	359	453	579	607
Monroe	332	370	486	593	663

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Montgomery	363	443	557	683	735
Osceola	300	342	451	549	648
Palo Alto	300	342	451	549	648
Pocahontas	373	374	471	605	633
Ringgold	332	370	486	593	663
Shelby	363	443	557	683	735
Tama	368	398	494	646	659
Union	332	370	486	593	663
Wayne	332	370	486	593	663
Winneshiek	304	356	468	608	824

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
O'Brien	300	342	451	549	648
Page	314	370	486	580	596
Plymouth	392	393	473	637	645
Poweshiek	339	396	521	666	667
Sac	334	343	447	588	615
Sioux	355	360	437	591	605
Taylor	332	370	486	593	663
Van Buren	332	370	486	593	663
Winnebago	327	359	453	579	607
Wright	373	374	471	605	633

KANSAS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Kansas City, MO-KS*	533	639	734	998	1048	Franklin, Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS	474	487	626	914	1099	Douglas
St. Joseph, MO-KS	326	403	499	630	746	Doniphan
Topeka, KS	416	453	555	703	738	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS*	429	481	621	798	909	Butler, Harvey, Sedgwick, Sumner

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Atchison, KS	382	425	521	759	915	Atchison
Coffeyville, KS	333	372	465	572	712	Montgomery
Dodge City, KS	445	446	537	661	706	Ford
Emporia, KS	314	366	480	632	664	Chase, Lyon
Garden City, KS	427	428	552	670	849	Finney
Great Bend, KS	272	328	419	557	721	Barton
Hays, KS	349	395	520	719	753	Ellis
Hutchinson, KS	346	385	505	692	698	Reno
Liberal, KS	364	448	518	636	771	Seward
Manhattan, KS	386	423	519	714	861	Geary, Pottawatomie, Riley
McPherson, KS	401	402	482	631	632	McPherson
Parsons, KS	284	340	437	592	593	Labette
Pittsburg, KS	344	403	530	714	796	Crawford
Salina, KS	401	403	519	700	701	Ottawa, Saline
Winfield, KS	310	379	464	588	593	Cowley

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	329	333	437	579	630
Barber	280	329	431	561	662
Brown	382	425	521	759	915
Cherokee	361	374	433	606	744
Clark	420	424	516	628	689
Cloud	370	384	486	638	639

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	324	360	448	577	628
Bourbon	316	336	436	630	710
Chautauqua	324	360	448	577	628
Cheyenne	340	345	454	581	583
Clay	377	414	509	653	804
Coffey	316	361	474	591	605

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KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Comanche	280	329	431	561	662
Dickinson	296	345	455	548	675
Elk	324	360	448	577	628
Gove	340	345	454	581	583
Grant	420	424	516	628	689
Greeley	420	424	516	628	689
Hamilton	420	424	516	628	689
Haskell	420	424	516	628	689
Jewell	370	384	486	638	639
Kingman	280	329	431	561	662
Lane	420	424	516	628	689
Logan	340	345	454	581	583
Marshall	377	414	509	653	804
Mitchell	370	384	486	638	639
Morton	420	424	516	628	689
Neosho	287	345	443	527	775
Norton	340	345	454	581	583
Pawnee	280	329	431	561	662
Pratt	282	330	433	561	662
Republic	370	384	486	638	639
Rooks	340	345	454	581	583
Russell	340	345	454	581	583
Sheridan	340	345	454	581	583
Smith	340	345	454	581	583
Stanton	420	424	516	628	689
Thomas	340	347	457	581	583
Wallace	340	345	454	581	583
Wichita	420	424	516	628	689
Woodson	324	360	448	577	628

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Decatur	340	345	454	581	583
Edwards	280	329	431	561	662
Ellsworth	370	384	486	638	639
Graham	340	345	454	581	583
Gray	420	424	516	628	689
Greenwood	316	361	474	591	605
Harper	280	329	431	561	662
Hodgeman	420	424	516	628	689
Kearny	420	424	516	628	689
Kiowa	280	329	431	561	662
Lincoln	370	384	486	638	639
Marion	316	361	474	591	605
Meade	420	424	516	628	689
Morris	377	414	509	653	804
Nemaha	382	425	521	759	915
Ness	420	424	516	628	689
Osborne	340	345	454	581	583
Phillips	340	345	454	581	583
Rawlins	340	345	454	581	583
Rice	351	383	485	643	644
Rush	280	329	431	561	662
Scott	420	424	516	628	689
Sherman	340	351	462	580	582
Stafford	280	329	431	561	662
Stevens	420	424	516	628	689
Trego	340	345	454	581	583
Washington	370	384	486	638	639
Wilson	324	360	449	577	628

KENTUCKY

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bowling Green, KY	380	453	551	733	864	Edmonson, Warren
Cincinnati-Middletown, OH-KY-IN	418	496	643	861	894	Boone, Bracken, Campbell, Gallatin, Grant, Kenton, Pendleton
Clarksville, TN-KY	454	471	548	790	800	Christian, Trigg
Elizabethtown, KY	351	391	471	672	827	Hardin, Larue
Evansville, IN-KY	365	426	530	655	710	Henderson, Webster
Huntington-Ashland, WV-KY-OH	342	405	486	600	617	Boyd, Greenup
Lexington-Fayette, KY	409	491	605	813	818	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN	411	472	561	784	832	Bullitt, Henry, Jefferson, Meade, Nelson, Oldham, Shelby, Spencer, Trimble
Owensboro, KY	341	379	499	691	734	Daviess, Hancock, McLean

KENTUCKY continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Campbellsville, KY	264	361	401	517	679	Taylor
Central City, KY	315	316	382	485	488	Muhlenberg
Corbin, KY	320	337	444	530	544	Whitley
Danville, KY	345	377	486	579	704	Boyle, Lincoln
Frankfort, KY	411	436	573	793	802	Anderson, Franklin
Glasgow, KY	287	334	424	539	599	Barren, Metcalfe
London, KY	346	375	417	512	700	Laurel
Madisonville, KY	343	344	414	519	726	Hopkins
Mayfield, KY	335	336	417	498	607	Graves
Maysville, KY	269	358	414	603	605	Lewis, Mason
Middlesborough, KY	255	348	388	463	568	Bell
Mount Sterling, KY	312	366	481	575	591	Bath, Menifee, Montgomery
Murray, KY	415	416	500	616	878	Calloway
Paducah, KY-IL	312	384	470	631	632	Ballard, Livingston, McCracken
Richmond-Berea, KY	354	379	484	676	800	Madison, Rockcastle
Somerset, KY	292	323	411	507	537	Pulaski
Union City, TN-KY	292	340	436	571	612	Fulton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	295	327	389	474	529	Allen	248	322	379	506	655
Breathitt	297	312	358	435	465	Breckinridge	342	344	442	591	607
Butler	374	444	540	710	722	Caldwell	334	335	402	509	578
Carlisle	342	378	466	597	673	Carroll	411	412	512	677	735
Carter	272	362	420	503	567	Casey	295	327	389	474	529
Clay	215	298	332	396	407	Clinton	295	327	389	474	529
Crittenden	323	324	389	508	577	Cumberland	295	327	389	474	529
Elliott	368	369	444	563	667	Estill	323	324	389	497	655
Fleming	327	354	437	547	549	Floyd	306	343	404	530	611
Garrard	353	395	474	566	830	Grayson	336	337	404	527	618
Green	295	327	392	474	529	Harlan	303	326	366	450	569
Harrison	359	361	472	619	620	Hart	297	324	399	509	593
Hickman	342	378	466	597	673	Jackson	325	342	392	474	482
Johnson	245	320	376	513	514	Knott	297	312	358	435	465
Knox	232	280	354	499	500	Lawrence	267	312	412	550	551
Lee	297	312	358	435	465	Leslie	297	312	358	435	465
Letcher	297	312	358	445	465	Logan	370	402	447	612	678
Lyon	407	414	491	637	647	McCreary	291	314	350	451	452
Magoffin	334	337	402	495	504	Marion	342	344	442	591	607
Marshall	374	375	452	589	766	Martin	334	337	402	495	504
Mercer	379	404	458	603	710	Monroe	297	324	399	509	593
Morgan	327	354	437	547	549	Nicholas	427	428	560	686	721
Ohio	317	337	384	509	559	Owen	458	524	596	813	1045
Owsley	297	312	358	435	465	Perry	322	339	388	464	569
Pike	353	354	426	511	523	Powell	317	400	489	585	600
Robertson	327	354	437	547	549	Rowan	369	409	455	571	572
Russell	295	327	389	474	529	Simpson	374	439	577	717	718
Todd	407	414	491	637	647	Union	372	373	449	554	565
Washington	342	344	442	591	607	Wayne	248	303	379	491	497

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KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wolfe	297	312	358	435	465

LOUISIANA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Alexandria, LA	363	394	469	608	609	Grant, Rapides
Baton Rouge, LA*	481	520	603	777	930	Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA	404	407	505	663	756	Lafourche, Terrebonne
Lafayette, LA	419	480	535	683	867	Lafayette, St. Martin
Lake Charles, LA	393	442	539	664	935	Calcasieu, Cameron
Monroe, LA	357	405	502	668	669	Ouachita, Union
New Orleans-Metairie-Kenner, LA	522	578	676	868	897	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA	407	469	548	694	695	Bossier, Caddo, De Soto

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Abbeville, LA	336	337	404	554	556	Vermilion
Bastrop, LA	347	348	433	519	562	Morehouse
Bogalusa, LA	308	311	371	494	495	Washington
Crowley, LA	316	317	385	487	557	Acadia
De Ridder, LA	347	356	419	610	734	Beauregard
Fort Polk South, LA	335	369	409	594	709	Vernon
Hammond, LA	353	410	516	618	734	Tangipahoa
Jennings, LA	337	338	406	514	515	Jefferson Davis
Minden, LA	327	328	415	561	562	Webster
Morgan City, LA	370	377	453	592	603	St. Mary
Natchez, MS-LA	296	403	458	547	803	Concordia
Natchitoches, LA	391	392	470	563	727	Natchitoches
New Iberia, LA	387	397	468	578	674	Iberia
Opelousas-Eunice, LA	248	300	382	515	547	St. Landry
Pierre Part, LA	382	383	460	561	574	Assumption
Ruston, LA	392	404	472	591	592	Jackson, Lincoln
Tallulah, LA	306	327	388	491	548	Madison

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	315	316	380	552	613
Bienville	375	381	451	539	590
Catahoula	295	318	389	494	596
East Carroll	306	327	388	491	548
Franklin	306	327	388	491	548
Red River	375	381	451	539	590
Sabine	375	381	451	539	590
Tensas	306	327	388	491	548

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Avoyelles	244	332	377	513	613
Caldwell	306	327	388	491	548
Claiborne	375	381	451	539	590
Evangeline	294	296	356	456	460
La Salle	295	318	389	494	596
Richland	306	327	388	491	548
St. James	390	455	556	685	686
West Carroll	306	327	388	491	548

LOUISIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Winn	315	341	379	478	509

MAINE

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bangor, ME	432	496	618	790	856	Penobscot
Lewiston-Auburn, ME	355	445	544	691	763	Androscoggin
Portland-South Portland-Biddeford, ME	505	593	756	930	1075	Cumberland, Sagadahoc, York

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Augusta-Waterville, ME	360	431	537	733	783	Kennebec
Rockland, ME	412	544	621	841	970	Knox

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aroostook	335	413	495	646	712	Franklin	416	449	547	653	848
Hancock	455	524	610	859	861	Lincoln	497	534	644	778	791
Oxford	346	460	530	706	885	Piscataquis	432	492	609	773	822
Somerset	345	428	507	716	759	Waldo	483	518	626	766	815
Washington	416	449	536	664	724						

MARYLAND

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Baltimore-Towson, MD	660	766	915	1160	1352	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Bethesda-Frederick-Gaithersburg, MD, Division	908	1011	1137	1462	1842	Frederick, Montgomery
Cumberland, MD-WV	309	374	439	592	691	Allegany
Hagerstown-Martinsburg, MD-WV	390	446	555	772	857	Washington
Salisbury, MD	416	517	609	753	865	Somerset, Wicomico
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division*	872	992	1124	1445	1919	Calvert, Charles, Prince George's
Wilmington, DE-MD-NJ, Division	647	679	800	1050	1195	Cecil

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Cambridge, MD	352	423	539	727	728	Dorchester
Easton, MD	549	550	662	896	946	Talbot
Lexington Park, MD	591	614	799	1050	1382	St. Mary's
Ocean Pines, MD	503	523	606	885	942	Worcester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	467	483	565	764	780	Garrett	294	364	452	583	773
Kent	526	527	634	778	1044						

MASSACHUSETTS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Barnstable Town, MA	595	697	916	1094	1123	Barnstable

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MASSACHUSETTS continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Boston-Quincy, MA, Division	998	1082	1203	1438	1516	Norfolk, Plymouth, Suffolk
Cambridge-Newton-Framingham, MA, Division	894	1058	1282	1593	1777	Middlesex
Essex County, MA, Division	667	817	993	1187	1224	Essex
Pittsfield, MA	444	521	645	829	830	Berkshire
Providence-New Bedford-Fall River, RI-MA	525	583	671	802	989	Bristol
Springfield, MA	480	574	728	871	1010	Franklin, Hampden, Hampshire
Worcester, MA	590	680	829	991	1048	Worcester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dukes	712	903	1075	1285	1318
Nantucket	832	1151	1278	1529	1569

MICHIGAN

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Ann Arbor, MI	656	737	896	1127	1128	Washtenaw
Battle Creek, MI	412	475	581	706	722	Calhoun
Bay City, MI	382	426	518	692	711	Bay
Detroit-Livonia-Dearborn, MI, Division*	534	620	720	860	885	Wayne
Flint, MI	483	510	612	758	777	Genesee
Grand Rapids-Wyoming, MI*	516	552	663	846	888	Barry, Ionia, Kent, Newaygo
Holland-Grand Haven, MI	521	529	633	878	948	Ottawa
Jackson, MI	432	482	575	715	734	Jackson
Kalamazoo-Portage, MI	462	493	599	796	830	Kalamazoo, Van Buren
Lansing-East Lansing, MI	480	521	645	817	886	Clinton, Eaton, Ingham
Monroe, MI	590	591	712	929	1022	Monroe
Muskegon-Norton Shores, MI	386	403	521	689	690	Muskegon
Niles-Benton Harbor, MI	406	455	555	679	871	Berrien
Saginaw-Saginaw Township North, MI	400	456	578	690	711	Saginaw
South Bend-Mishawaka, IN-MI	454	505	607	781	789	Cass
Warren-Farmington Hills-Troy, MI, Division	640	670	833	1104	1152	Lapeer, Livingston, Macomb, Oakland, St. Clair

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Adrian, MI	386	486	595	759	829	Lenawee
Allegan, MI	416	500	599	749	806	Allegan
Alma, MI	408	409	489	652	728	Gratiot
Alpena, MI	361	410	457	631	698	Alpena
Big Rapids, MI	363	432	523	695	917	Mecosta
Cadillac, MI	342	454	525	683	744	Missaukee, Wexford
Coldwater, MI	412	440	579	694	713	Branch
Escanaba, MI	314	374	453	596	632	Delta
Houghton, MI	322	377	453	591	675	Houghton, Keweenaw
Iron Mountain, MI-WI	306	370	470	569	769	Dickinson
Marinette, WI-MI	365	373	439	580	607	Menominee
Marquette, MI	297	385	458	576	626	Marquette
Midland, MI	383	461	568	782	838	Midland
Mount Pleasant, MI	404	437	487	701	765	Isabella
Owosso, MI	355	437	544	749	835	Shiawassee
Sault Ste. Marie, MI	329	409	505	612	686	Chippewa
Sturgis, MI	410	457	539	665	746	St. Joseph

MICHIGAN continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Traverse City, MI	532	533	651	844	845	Benzie, Grand Traverse, Kalkaska, Leelanau

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	348	403	493	664	703
Antrim	431	432	521	724	914
Baraga	298	378	451	555	626
Cheboygan	348	404	499	670	704
Crawford	348	404	504	665	704
Gladwin	369	389	464	621	687
Hillsdale	348	428	510	717	784
Iosco	369	391	452	657	682
Lake	377	412	492	644	775
Mackinac	329	409	506	610	665
Mason	303	356	466	610	670
Montmorency	348	404	505	665	704
Ogemaw	369	388	480	620	686
Osceola	380	381	458	627	790
Otsego	406	474	624	748	786
Roscommon	391	393	471	612	753
Schoolcraft	321	392	465	610	665

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alger	298	378	451	555	626
Arenac	369	389	464	621	687
Charlevoix	451	488	541	778	780
Clare	346	359	472	636	638
Emmet	378	466	580	782	827
Gogebic	312	373	452	553	657
Huron	365	367	439	582	707
Iron	312	373	452	553	657
Luce	321	392	465	610	665
Manistee	396	410	538	644	722
Montcalm	383	444	508	686	687
Oceana	359	416	496	600	640
Ontonagon	312	373	452	553	657
Oscoda	348	403	493	664	703
Presque Isle	348	403	493	664	703
Sanilac	408	440	490	690	691
Tuscola	358	409	519	623	745

MINNESOTA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Duluth, MN-WI	343	419	526	663	844	Carlton, St. Louis
Fargo, ND-MN	347	412	524	756	874	Clay
Grand Forks, ND-MN	355	446	547	693	942	Polk
La Crosse, WI-MN	351	411	541	718	882	Houston
Minneapolis-St. Paul-Bloomington, MN-WI*	651	763	928	1229	1386	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN	473	504	664	861	899	Dodge, Olmsted, Wabasha
St. Cloud, MN	458	504	604	854	995	Benton, Stearns

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albert Lea, MN	314	368	484	577	761	Freeborn
Alexandria, MN	348	414	521	755	826	Douglas
Austin, MN	316	370	472	586	587	Mower
Bemidji, MN	342	404	514	707	902	Beltrami
Brainerd, MN	356	415	545	717	793	Cass, Crow Wing
Fairmont, MN	339	340	409	594	595	Martin
Faribault-Northfield, MN	479	500	658	786	914	Rice
Fergus Falls, MN	313	372	480	585	589	Otter Tail
Hutchinson, MN	458	459	569	815	816	McLeod
Mankato-North Mankato, MN	406	491	569	800	999	Blue Earth, Nicollet

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MINNESOTA continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Marshall, MN	376	422	519	647	648	Lyon
New Ulm, MN	364	414	497	595	609	Brown
Owatonna, MN	382	464	586	737	961	Steele
Red Wing, MN	394	462	607	773	836	Goodhue
Wahpeton, ND-MN	316	370	462	610	688	Wilkin
Willmar, MN	396	406	504	679	680	Kandiyohi
Winona, MN	359	424	553	764	970	Winona
Worthington, MN	302	378	459	609	610	Nobles

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	353	415	545	680	736	Becker	293	347	452	566	588
Big Stone	298	363	460	588	612	Chippewa	367	399	479	573	588
Clearwater	341	385	488	616	856	Cook	316	404	487	614	615
Cottonwood	311	340	425	542	565	Faribault	311	340	425	542	565
Fillmore	339	408	509	664	833	Grant	298	363	460	588	612
Hubbard	341	385	488	616	856	Itasca	333	411	512	620	727
Jackson	311	340	425	542	565	Kanabec	353	415	545	680	736
Kittson	316	378	481	600	716	Koochiching	316	404	487	614	615
Lac qui Parle	367	399	479	573	588	Lake	316	404	487	614	615
Lake of the Woods	341	385	488	616	856	Le Sueur	437	451	543	756	757
Lincoln	367	399	479	573	588	Mahnomen	341	385	488	616	856
Marshall	316	378	481	600	716	Meeker	395	438	508	664	667
Mille Lacs	391	403	531	659	732	Morrison	329	391	506	605	888
Murray	311	340	425	542	565	Norman	316	378	481	600	716
Pennington	308	363	472	596	651	Pine	394	427	552	721	722
Pipestone	311	340	425	542	565	Pope	298	363	460	588	612
Red Lake	316	378	481	600	716	Redwood	367	399	479	573	588
Renville	395	412	508	664	667	Rock	311	340	425	542	565
Roseau	318	378	490	600	715	Sibley	395	412	508	664	667
Stevens	317	372	488	588	613	Swift	298	363	460	588	612
Todd	355	399	493	595	791	Traverse	298	363	460	588	612
Wadena	355	399	493	595	791	Waseca	353	415	545	652	681
Watonwan	311	340	425	542	565	Yellow Medicine	367	399	479	573	588

MISSISSIPPI

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Gulfport-Biloxi, MS	483	513	597	778	788	Hancock, Harrison, Stone
Hattiesburg, MS	378	430	513	747	748	Forrest, Lamar, Perry
Jackson, MS	455	514	596	716	732	Copiah, Hinds, Madison, Rankin, Simpson
Memphis, TN-MS-AR	512	556	618	824	829	DeSoto, Marshall, Tate, Tunica
Pascagoula, MS	415	475	569	785	844	George, Jackson

MISSISSIPPI continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Brookhaven, MS	293	362	402	551	706	Lincoln
Clarksdale, MS	376	389	513	613	901	Coahoma
Cleveland, MS	359	406	467	560	821	Bolivar
Columbus, MS	386	396	464	674	675	Lowndes
Corinth, MS	329	355	396	550	696	Alcorn
Greenville, MS	304	396	467	606	741	Washington
Greenwood, MS	277	323	424	567	597	Carroll, Leflore
Grenada, MS	317	348	407	573	682	Grenada
Indianola, MS	292	359	402	573	574	Sunflower
Laurel, MS	299	346	437	575	581	Jasper, Jones
McComb, MS	341	367	411	523	550	Amite, Pike
Meridian, MS	367	416	480	614	636	Clarke, Kemper, Lauderdale
Natchez, MS-LA	296	403	458	547	803	Adams
Oxford, MS	395	467	576	690	708	Lafayette
Picayune, MS	388	389	466	569	802	Pearl River
Starkville, MS	351	426	519	676	677	Oktibbeha
Tupelo, MS	387	404	465	623	654	Itawamba, Lee, Pontotoc
Vicksburg, MS	449	493	550	657	675	Warren
West Point, MS	325	326	392	571	572	Clay
Yazoo City, MS	346	367	418	499	514	Yazoo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Attala	323	333	394	528	661	Benton	403	451	500	600	614
Calhoun	323	333	394	528	661	Chickasaw	333	409	479	574	589
Choctaw	323	333	394	528	661	Claiborne	334	335	402	504	591
Covington	334	335	402	504	591	Franklin	329	369	411	491	566
Greene	319	342	421	550	551	Holmes	372	430	479	573	600
Humphreys	274	317	419	556	582	Issaquena	372	430	479	573	600
Jefferson	334	335	402	504	591	Jefferson Davis	334	335	402	504	591
Lawrence	334	335	402	504	591	Leake	338	365	430	517	550
Marion	314	356	399	524	596	Monroe	343	366	414	518	554
Montgomery	323	333	394	528	661	Neshoba	286	386	442	526	773
Newton	367	408	469	614	635	Noxubee	372	386	449	615	656
Panola	272	377	420	503	580	Prentiss	265	309	408	489	501
Quitman	360	385	454	544	682	Scott	350	372	421	504	543
Sharkey	372	430	479	573	600	Smith	338	365	430	517	550
Tallahatchie	274	317	419	556	582	Tippah	313	340	377	491	611
Tishomingo	259	337	399	501	503	Union	299	416	461	552	668
Walthall	329	369	411	491	566	Wayne	319	342	421	550	551
Webster	323	333	394	528	661	Wilkinson	329	369	411	491	566
Winston	333	409	479	574	589	Yalobusha	323	333	394	528	661

MISSOURI

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Columbia, MO	372	445	553	805	896	Boone, Howard
Fayetteville-Springdale-Rogers, AR-MO	409	431	538	785	795	McDonald
Jefferson City, MO	354	380	489	679	759	Callaway, Cole, Moniteau, Osage

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MISSOURI continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Joplin, MO	323	388	494	629	630	Jasper, Newton
Kansas City, MO-KS*	533	639	734	998	1048	Bates, Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO-KS	326	403	499	630	746	Andrew, Buchanan, DeKalb
St. Louis, MO-IL*	546	596	741	966	1032	Crawford, Sullivan part, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, Washington, St. Louis city
Springfield, MO	340	401	514	732	835	Christian, Dallas, Greene, Polk, Webster

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Branson, MO	424	425	531	665	749	Stone, Taney
Cape Girardeau-Jackson, MO-IL	330	383	505	649	822	Bollinger, Cape Girardeau
Farmington, MO	393	395	475	663	690	St. Francois
Fort Leonard Wood, MO	388	419	466	677	741	Pulaski
Hannibal, MO	300	351	462	585	587	Marion, Ralls
Kennett, MO	307	334	396	506	565	Dunklin
Keokuk-Fort Madison, IA-MO	345	397	458	579	630	Clark
Kirksville, MO	323	376	495	649	709	Adair, Schuyler
Lebanon, MO	360	361	439	574	753	Laclede
Marshall, MO	300	351	462	599	703	Saline
Maryville, MO	401	402	500	598	698	Nodaway
Mexico, MO	367	368	443	559	710	Audrain
Moberly, MO	306	360	471	597	598	Randolph
Poplar Bluff, MO	343	344	415	575	615	Butler
Quincy, IL-MO	307	366	473	619	642	Lewis
Rolla, MO	336	362	454	628	773	Phelps
Sedalia, MO	396	397	514	641	768	Pettis
Sikeston, MO	377	378	473	590	697	Scott
Warrensburg, MO	398	424	514	687	773	Johnson
West Plains, MO	298	342	433	537	760	Howell

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atchison	360	361	449	559	692	Barry	285	359	437	570	589
Barton	271	342	417	505	554	Benton	282	336	434	602	603
Camden	414	420	516	752	753	Carroll	354	387	500	627	700
Carter	334	335	403	560	602	Cedar	282	336	434	602	603
Chariton	354	387	500	627	700	Cooper	360	380	494	659	767
Crawford	283	359	435	579	763	Dade	348	364	474	616	663
Daviess	360	361	449	559	692	Dent	322	350	430	567	721
Douglas	288	323	390	516	598	Gasconade	321	349	452	566	720
Gentry	360	361	449	559	692	Grundy	360	361	449	559	692
Harrison	360	361	449	559	692	Henry	327	380	501	601	615
Hickory	282	336	434	602	603	Holt	360	361	449	559	692
Iron	328	372	489	625	723	Knox	326	336	443	548	646
Lawrence	372	373	449	611	705	Linn	326	336	443	548	646
Livingston	348	349	443	592	775	Macon	329	330	407	487	524
Madison	328	372	489	625	723	Maries	322	350	430	567	721

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Mercer	360	361	449	559	692
Mississippi	298	324	425	561	647
Montgomery	298	348	459	590	591
New Madrid	294	338	413	551	552
Ozark	288	323	390	516	598
Perry	337	367	481	576	846
Putnam	326	336	443	548	646
Ripley	334	335	403	560	602
Ste. Genevieve	328	372	489	625	723
Shannon	288	323	390	516	598
Stoddard	314	326	405	552	597
Texas	295	311	374	515	593
Wayne	334	335	403	560	602
Wright	294	308	401	506	508

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Miller	359	360	430	574	598
Monroe	298	348	459	590	591
Morgan	383	384	461	626	729
Oregon	288	323	390	516	598
Pemiscot	279	327	428	538	539
Pike	294	344	453	593	648
Reynolds	334	335	403	560	602
St. Clair	282	336	434	602	603
Scotland	326	336	443	548	646
Shelby	326	336	443	548	646
Sullivan	326	336	443	548	646
Vernon	316	376	455	637	638
Worth	360	361	449	559	692

MONTANA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Billings, MT	363	432	559	754	908	Carbon, Yellowstone
Great Falls, MT	333	401	514	695	837	Cascade
Missoula, MT	429	494	624	809	968	Missoula

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bozeman, MT	411	489	636	849	1114	Gallatin
Butte-Silver Bow, MT	353	379	488	638	698	Silver Bow
Havre, MT	294	362	452	652	692	Hill
Helena, MT	377	440	551	794	795	Jefferson, Lewis and Clark
Kalispell, MT	363	446	560	792	971	Flathead

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	402	469	616	797	966
Blaine	319	388	492	656	749
Carter	350	363	431	581	612
Custer	273	379	419	610	612
Dawson	350	363	431	581	612
Fallon	350	363	431	581	612
Garfield	350	363	431	581	612
Golden Valley	350	363	431	581	612
Judith Basin	319	388	492	656	749
Liberty	319	388	492	656	749
McCone	350	363	431	581	612
Meagher	402	469	616	797	966
Musselshell	350	363	431	581	612
Petroleum	350	363	431	581	612
Pondera	319	388	492	656	749
Powell	358	411	522	706	727

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	349	363	468	580	612
Broadwater	358	411	522	706	727
Chouteau	319	388	492	656	749
Daniels	350	363	431	581	612
Deer Lodge	358	411	522	706	727
Fergus	349	364	479	580	612
Glacier	319	388	492	656	749
Granite	358	411	522	706	727
Lake	427	429	520	701	755
Lincoln	348	427	534	739	828
Madison	402	469	616	797	966
Mineral	430	487	611	783	937
Park	383	447	587	702	928
Phillips	350	363	431	581	612
Powder River	350	363	431	581	612
Prairie	350	363	431	581	612

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MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ravalli	408	445	571	748	885
Roosevelt	350	363	431	581	612
Sanders	348	427	534	739	828
Stillwater	350	363	431	581	612
Teton	319	388	492	656	749
Treasure	350	363	431	581	612
Wheatland	350	363	431	581	612
Richland	350	363	431	581	612
Rosebud	349	363	470	580	612
Sheridan	350	363	431	581	612
Sweet Grass	350	363	431	581	612
Toole	319	388	492	656	749
Valley	350	363	431	581	612
Wibaux	350	363	431	581	612

NEBRASKA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Lincoln, NE	408	458	583	819	990	Lancaster, Seward
Omaha-Council Bluffs, NE-IA	457	520	648	864	873	Cass, Douglas, Sarpy, Saunders, Washington
Sioux City, IA-NE-SD	379	444	584	735	736	Dakota, Dixon

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Beatrice, NE	408	409	491	599	602	Gage
Columbus, NE	401	402	482	703	723	Platte
Fremont, NE	388	455	598	714	872	Dodge
Grand Island, NE	414	415	512	636	739	Hall, Howard, Merrick
Hastings, NE	337	394	518	649	740	Adams, Clay
Kearney, NE	365	425	560	759	854	Buffalo, Kearney
Lexington, NE	419	455	505	624	626	Dawson, Gosper
Norfolk, NE	360	377	496	652	653	Madison, Pierce, Stanton
North Platte, NE	359	403	511	629	792	Lincoln, Logan, McPherson
Scottsbluff, NE	406	407	489	623	822	Banner, Scotts Bluff

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Antelope	404	405	486	609	629
Blaine	409	410	492	608	709
Box Butte	339	344	453	593	705
Brown	339	344	453	588	705
Butler	391	392	471	597	626
Chase	349	403	462	610	611
Cheyenne	339	344	453	588	705
Cuming	404	405	486	609	629
Dawes	310	365	479	574	713
Dundy	349	403	462	610	611
Franklin	344	403	530	678	787
Furnas	349	403	462	610	611
Garfield	409	410	492	608	709
Greeley	409	410	492	608	709
Harlan	344	403	530	678	787
Hitchcock	349	403	462	610	611
Hooker	349	403	462	610	611
Arthur	349	403	462	610	611
Boone	404	405	486	609	629
Boyd	339	344	453	588	705
Burt	404	405	486	609	629
Cedar	404	405	486	609	629
Cherry	339	344	453	588	705
Colfax	404	405	486	609	629
Custer	409	410	492	608	709
Deuel	339	344	453	588	705
Fillmore	391	392	471	597	626
Frontier	349	403	462	610	611
Garden	339	344	453	588	705
Grant	349	403	462	610	611
Hamilton	409	410	492	608	709
Hayes	349	403	462	610	611
Holt	339	344	453	588	705
Jefferson	391	392	471	597	626

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Johnson	391	392	471	597	626
Keya Paha	339	344	453	588	705
Knox	404	405	486	609	629
Morrill	339	344	453	588	705
Nemaha	391	392	471	597	626
Otoe	399	401	481	596	625
Perkins	349	403	462	610	611
Polk	391	392	471	597	626
Richardson	391	392	471	597	626
Saline	433	457	522	638	641
Sherman	409	410	492	608	709
Thayer	391	392	471	597	626
Thurston	404	405	486	609	629
Wayne	404	405	486	609	629
Wheeler	409	410	492	608	709

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Keith	349	403	462	610	611
Kimball	339	344	453	588	705
Loup	409	410	492	608	709
Nance	404	405	486	609	629
Nuckolls	344	403	530	678	787
Pawnee	391	392	471	597	626
Phelps	344	403	530	678	787
Red Willow	293	382	424	617	630
Rock	339	344	453	588	705
Sheridan	339	344	453	588	705
Sioux	339	344	453	588	705
Thomas	349	403	462	610	611
Valley	409	410	492	608	709
Webster	344	403	530	678	787
York	346	409	535	649	780

NEVADA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Carson City, NV	523	631	759	1106	1336	Carson
Las Vegas-Paradise, NV*	669	785	928	1287	1565	Clark
Reno-Sparks, NV	577	689	852	1239	1496	Storey, Washoe

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Elko, NV	498	541	700	864	1126	Elko, Eureka
Fallon, NV	552	553	695	879	1033	Churchill
Gardnerville Ranchos, NV	577	710	863	1201	1332	Douglas
Pahrump, NV	387	537	595	868	869	Nye

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Esmeralda	427	500	638	847	937
Lander	427	500	638	847	937
Lyon	457	514	676	985	986
Pershing	427	500	638	847	937

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Humboldt	436	511	671	803	826
Lincoln	427	500	638	847	937
Mineral	427	500	638	847	937
White Pine	427	500	638	847	937

NEW HAMPSHIRE

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Manchester-Nashua, NH	667	795	980	1171	1338	Hillsborough
Rockingham County-Strafford County, NH, Division	621	759	954	1267	1393	Rockingham, Strafford

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Berlin, NH-VT	329	429	506	686	800	Coos
Claremont, NH	422	511	651	882	953	Sullivan

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NEW HAMPSHIRE continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Concord, NH	499	590	769	950	1218	Merrimack
Keene, NH	559	597	748	902	1098	Cheshire
Laconia, NH	455	560	699	923	1186	Belknap
Lebanon, NH-VT	496	552	677	912	985	Grafton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Carroll	505	533	703	956	1174

NEW JERSEY

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Allentown-Bethlehem-Easton, PA-NJ	474	577	685	885	937	Warren
Atlantic City, NJ	631	697	831	1053	1180	Atlantic
Camden, NJ, Division	642	698	860	1113	1339	Burlington, Camden, Gloucester
Edison, NJ, Division	846	913	1086	1379	1548	Middlesex, Monmouth, Ocean, Somerset
Newark-Union, NJ-PA, Division*	733	899	1026	1244	1444	Essex, Hunterdon, Morris, Sussex, Union
New York-Wayne-White Plains, NY-NJ, Division	845	909	1017	1244	1286	Bergen, Hudson, Passaic
Ocean City, NJ	558	572	718	942	943	Cape May
Trenton-Ewing, NJ	706	813	977	1168	1310	Mercer
Vineland-Millville-Bridgeton, NJ	644	646	814	989	1042	Cumberland
Wilmington, DE-MD-NJ, Division	647	679	800	1050	1195	Salem

NEW MEXICO

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albuquerque, NM*	470	553	698	1016	1220	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM	418	446	536	708	798	San Juan
Las Cruces, NM	405	437	487	672	746	Dona Ana
Santa Fe, NM	540	672	816	1068	1278	Santa Fe

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Alamogordo, NM	334	395	437	639	769	Otero
Carlsbad-Artesia, NM	283	361	424	569	691	Eddy
Clovis, NM	367	380	441	597	776	Curry
Deming, NM	317	344	382	487	585	Luna
Espanola, NM	393	400	473	612	679	Rio Arriba
Gallup, NM	348	409	538	643	833	McKinley
Grants, NM	333	359	400	581	631	Cibola
Hobbs, NM	342	372	413	543	572	Lea
Las Vegas, NM	369	398	490	651	756	San Miguel
Los Alamos, NM	545	636	838	1003	1031	Los Alamos
Portales, NM	339	348	409	567	701	Roosevelt
Roswell, NM	352	353	451	590	591	Chaves
Silver City, NM	353	409	465	655	656	Grant
Taos, NM	523	568	629	753	774	Taos

NEW MEXICO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	320	360	427	621	624
De Baca	365	376	439	592	721
Harding	365	376	439	592	721
Lincoln	343	432	526	662	924
Quay	365	376	439	592	721
Socorro	362	363	435	521	738

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Colfax	390	417	469	592	616
Guadalupe	431	437	520	653	681
Hidalgo	320	360	427	621	624
Mora	431	437	520	653	681
Sierra	284	353	438	640	770
Union	365	376	439	592	721

NEW YORK

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albany-Schenectady-Troy, NY	542	562	685	820	897	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY	436	438	524	684	802	Broome, Tioga
Buffalo-Niagara Falls, NY*	538	542	648	806	899	Erie, Niagara
Elmira, NY	478	479	575	739	770	Chemung
Glens Falls, NY	454	480	604	762	858	Warren, Washington
Ithaca, NY	577	593	694	841	872	Tompkins
Kingston, NY	610	662	794	1005	1249	Ulster
Nassau-Suffolk, NY, Division	898	1037	1225	1625	1771	Nassau, Suffolk
New York-Wayne-White Plains, NY-NJ, Division	845	909	1017	1244	1286	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY	634	745	914	1121	1192	Dutchess, Orange
Rochester, NY	511	567	691	829	878	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY	511	512	617	790	855	Madison, Onondaga, Oswego
Utica-Rome, NY	451	452	544	667	757	Herkimer, Oneida
Westchester County, NY, HUD Defined	849	1012	1176	1419	1749	Westchester

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Amsterdam, NY	426	458	513	647	703	Montgomery
Auburn, NY	458	459	551	734	850	Cayuga
Batavia, NY	502	503	604	749	846	Genesee
Corning, NY	455	456	548	703	776	Steuben
Cortland, NY	464	465	568	722	886	Cortland
Gloversville, NY	359	438	554	663	704	Fulton
Hudson, NY	532	543	640	773	824	Columbia
Jamestown-Dunkirk-Fredonia, NY	432	433	521	672	733	Chautauqua
Malone, NY	420	421	503	646	715	Franklin
Ogdensburg-Massena, NY	427	428	515	652	712	St. Lawrence
Olean, NY	428	429	516	678	778	Cattaraugus
Oneonta, NY	452	463	544	723	752	Otsego
Plattsburgh, NY	486	488	585	743	966	Clinton
Seneca Falls, NY	492	493	591	778	984	Seneca
Watertown-Fort Drum, NY	479	480	577	744	781	Jefferson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	422	424	508	633	778
Delaware	436	438	525	649	854
Greene	459	496	604	785	786

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Chenango	431	434	520	655	913
Essex	458	459	551	733	797
Hamilton	462	463	556	693	803

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NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	426	428	513	642	716
Sullivan	468	519	666	797	934
Yates	453	459	545	706	707
Schuyler	464	466	559	745	769
Wyoming	442	454	533	776	847

NORTH CAROLINA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Asheville, NC	434	507	579	776	1017	Buncombe, Haywood, Henderson, Madison
Burlington, NC	518	538	626	849	850	Alamance
Charlotte-Gastonia-Concord, NC-SC	602	653	726	913	1063	Anson, Cabarrus, Gaston, Mecklenburg, Union
Durham, NC	477	654	734	958	1034	Chatham, Durham, Orange, Person
Fayetteville, NC	473	511	570	812	960	Cumberland, Hoke
Goldsboro, NC	366	434	508	636	850	Wayne
Greensboro-High Point, NC	496	565	630	798	853	Guilford, Randolph, Rockingham
Greenville, NC	424	439	540	750	752	Greene, Pitt
Hickory-Lenoir-Morganton, NC	427	449	516	662	771	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC	432	463	520	730	857	Onslow
Raleigh-Cary, NC	636	715	792	998	1034	Franklin, Johnston, Wake
Rocky Mount, NC	366	441	562	698	703	Edgecombe, Nash
Virginia Beach-Norfolk-Newport News, VA-NC*	653	686	788	1087	1361	Currituck
Wilmington, NC	497	550	662	930	931	Brunswick, New Hanover, Pender
Winston-Salem, NC	434	495	571	780	916	Davie, Forsyth, Stokes, Yadkin

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albemarle, NC	379	409	500	681	741	Stanly
Boone, NC	404	494	621	755	975	Watauga
Brevard, NC	320	445	493	622	656	Transylvania
Dunn, NC	415	451	500	675	878	Harnett
Elizabeth City, NC	348	462	538	740	845	Camden, Pasquotank, Perquimans
Forest City, NC	374	375	459	550	565	Rutherford
Henderson, NC	403	404	486	582	597	Vance
Kill Devil Hills, NC	551	552	677	895	896	Dare
Kinston, NC	365	367	482	576	827	Lenoir
Laurinburg, NC	403	404	512	622	775	Scotland
Lincolnton, NC	339	467	521	629	640	Lincoln
Lumberton, NC	335	405	470	564	628	Robeson
Morehead City, NC	446	447	537	782	942	Carteret
Mount Airy, NC	333	401	446	596	597	Surry
New Bern, NC	405	458	524	702	873	Craven, Jones, Pamlico
North Wilkesboro, NC	334	382	456	585	609	Wilkes
Roanoke Rapids, NC	303	409	465	588	674	Halifax, Northampton
Rockingham, NC	328	411	456	573	574	Richmond
Salisbury, NC	446	482	537	764	816	Rowan
Sanford, NC	357	488	551	677	967	Lee
Shelby, NC	406	407	489	643	724	Cleveland
Southern Pines-Pinehurst, NC	447	448	564	811	989	Moore
Statesville-Mooresville, NC	489	493	590	782	1020	Iredell
Thomasville-Lexington, NC	419	420	506	661	755	Davidson
Washington, NC	306	399	470	566	578	Beaufort

NORTH CAROLINA continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Wilson, NC	459	460	558	668	708	Wilson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	334	392	449	589	590	Ashe	347	348	419	554	655
Avery	374	462	546	653	771	Bertie	313	397	457	547	561
Bladen	256	311	394	574	620	Caswell	408	409	500	611	638
Cherokee	251	325	386	561	676	Chowan	360	469	554	752	753
Clay	396	398	477	626	729	Columbus	304	391	434	520	532
Duplin	341	369	411	520	521	Gates	360	469	554	752	753
Graham	396	398	477	626	729	Granville	449	450	541	675	803
Hertford	298	411	458	601	602	Hyde	360	469	554	752	753
Jackson	444	460	547	718	720	McDowell	318	380	490	604	605
Macon	369	401	517	628	907	Martin	363	385	437	566	567
Mitchell	374	462	546	653	771	Montgomery	373	405	450	561	790
Polk	410	411	504	632	633	Sampson	340	347	409	568	720
Swain	396	398	477	626	729	Tyrrell	360	469	554	752	753
Warren	412	413	495	605	614	Washington	339	457	521	625	640
Yancey	367	368	443	529	543						

NORTH DAKOTA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bismarck, ND	391	409	509	737	755	Burleigh, Morton
Fargo, ND-MN	347	412	524	756	874	Cass
Grand Forks, ND-MN	355	446	547	693	942	Grand Forks

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Dickinson, ND	297	361	418	606	735	Billings, Stark
Jamestown, ND	352	353	423	586	743	Stutsman
Minot, ND	303	374	464	639	760	McHenry, Renville, Ward
Wahpeton, ND-MN	316	370	462	610	688	Richland
Williston, ND	265	323	407	536	568	Williams

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	296	344	422	551	573	Barnes	345	347	416	573	731
Benson	345	347	416	573	731	Bottineau	344	390	485	683	744
Bowman	296	344	422	551	573	Burke	344	390	485	683	744
Cavalier	345	347	416	573	731	Dickey	345	347	416	573	731
Divide	296	344	422	551	573	Dunn	296	344	422	551	573
Eddy	345	347	416	573	731	Emmons	344	390	485	683	744
Foster	345	347	416	573	731	Golden Valley	296	344	422	551	573
Grant	296	344	422	551	573	Griggs	345	347	416	573	731
Hettinger	296	344	422	551	573	Kidder	344	390	485	683	744
LaMoure	345	347	416	573	731	Logan	344	390	485	683	744
McIntosh	344	390	485	683	744	McKenzie	296	344	422	551	573
McLean	344	390	485	683	744	Mercer	296	344	422	551	573

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Mountrail	344	390	485	683	744
Oliver	296	344	422	551	573
Pierce	344	390	485	683	744
Ransom	345	347	416	573	731
Sargent	345	347	416	573	731
Sioux	296	344	422	551	573
Steele	362	449	535	717	774
Traill	362	449	535	717	774
Wells	345	347	416	573	731

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Nelson	362	449	535	717	774
Pembina	362	449	535	717	774
Ramsey	345	355	467	573	736
Rolette	344	390	485	683	744
Sheridan	344	390	485	683	744
Slope	296	344	422	551	573
Towner	345	347	416	573	731
Walsh	362	449	535	717	774

OHIO

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Akron, OH	455	532	681	866	893	Portage, Summit
Canton-Massillon, OH	399	443	559	706	748	Carroll, Stark
Cincinnati-Middletown, OH-KY-IN	418	496	643	861	894	Brown, Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH*	511	582	709	931	1000	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH	459	533	674	848	921	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway, Union
Dayton, OH	430	490	602	810	968	Greene, Miami, Montgomery, Preble
Huntington-Ashland, WV-KY-OH	342	405	486	600	617	Lawrence
Lima, OH	407	412	511	629	637	Allen
Mansfield, OH	335	410	516	673	698	Richland
Parkersburg-Marietta, WV-OH	354	379	485	644	695	Washington
Sandusky, OH	367	443	567	739	778	Erie
Springfield, OH	411	456	550	712	913	Clark
Toledo, OH	415	462	572	738	805	Fulton, Lucas, Ottawa, Wood
Weirton-Steubenville, WV-OH	305	374	461	576	625	Jefferson
Wheeling, WV-OH	299	360	460	578	675	Belmont
Youngstown-Warren-Boardman, OH-PA	388	435	526	664	715	Mahoning, Trumbull

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Ashland, OH	353	421	545	703	704	Ashland
Ashtabula, OH	365	430	549	697	812	Ashtabula
Athens, OH	415	451	500	643	669	Athens
Bellefontaine, OH	454	459	546	687	709	Logan
Bucyrus, OH	395	399	476	616	673	Crawford
Cambridge, OH	320	395	455	601	602	Guernsey
Celina, OH	308	400	472	636	638	Mercer
Chillicothe, OH	375	425	496	613	704	Ross
Coshocton, OH	325	392	467	604	689	Coshocton
Defiance, OH	377	432	524	661	805	Defiance
East Liverpool-Salem, OH	398	421	509	630	765	Columbiana
Findlay, OH	374	437	567	771	819	Hancock
Fremont, OH	444	454	534	664	725	Sandusky
Greenville, OH	316	404	487	648	649	Darke
Marion, OH	361	455	556	705	858	Marion

OHIO continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Mount Vernon, OH	441	444	533	682	782	Knox
New Philadelphia-Dover, OH	335	391	516	653	655	Tuscarawas
Norwalk, OH	367	444	543	753	829	Huron
Point Pleasant, WV-OH	342	371	412	524	619	Gallia
Portsmouth, OH	348	364	435	571	683	Scioto
Sidney, OH	416	425	553	690	764	Shelby
Tiffin, OH	369	387	500	628	629	Seneca
Urbana, OH	348	425	536	661	711	Champaign
Van Wert, OH	314	376	483	588	592	Van Wert
Wapakoneta, OH	365	391	516	668	669	Auglaize
Washington, OH	401	461	563	678	904	Fayette
Wilmington, OH	387	478	530	772	907	Clinton
Wooster, OH	372	463	570	681	745	Wayne
Zanesville, OH	389	399	480	615	775	Muskingum

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	338	351	416	551	582
Harrison	324	387	486	622	623
Highland	414	415	499	672	684
Holmes	383	384	461	608	645
Meigs	388	421	467	640	641
Morgan	383	384	461	566	633
Paulding	349	382	475	620	622
Pike	325	418	500	599	623
Vinton	318	393	436	597	743
Wyandot	379	380	456	625	626

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hardin	380	413	458	574	752
Henry	341	418	506	651	666
Hocking	296	412	457	652	653
Jackson	422	424	508	609	624
Monroe	383	384	461	566	633
Noble	383	384	461	566	633
Perry	414	415	499	624	625
Putnam	350	387	510	633	660
Williams	414	420	521	690	762

OKLAHOMA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Fort Smith, AR-OK	325	368	459	614	670	Le Flore, Sequoyah
Lawton, OK	355	383	482	704	847	Comanche
Oklahoma City, OK*	439	475	580	798	903	Canadian, Cleveland, Grady, Lincoln, Logan, McClain, Oklahoma
Tulsa, OK*	467	505	630	842	919	Creek, Okmulgee, Osage, Pawnee, Rogers, Tulsa, Wagoner

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Ada, OK	298	333	424	578	579	Pontotoc
Altus, OK	301	391	439	616	618	Jackson
Ardmore, OK	385	411	464	574	677	Carter, Love
Bartlesville, OK	362	363	442	619	681	Washington
Duncan, OK	277	321	423	578	579	Stephens
Durant, OK	346	347	426	551	656	Bryan
Elk City, OK	332	359	399	522	700	Beckham
Enid, OK	360	379	456	629	630	Garfield
Guymon, OK	341	408	460	582	696	Texas
McAlester, OK	299	349	460	579	706	Pittsburg
Miami, OK	333	334	399	544	545	Ottawa

OKLAHOMA continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Muskogee, OK	332	391	464	587	648	Muskogee
Ponca City, OK	297	368	457	631	632	Kay
Shawnee, OK	380	433	481	611	708	Pottawatomie
Stillwater, OK	390	447	548	776	799	Payne
Tahlequah, OK	354	381	441	554	637	Cherokee
Woodward, OK	304	355	438	546	547	Woodward

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	332	333	398	475	489
Atoka	307	344	424	551	643
Blaine	335	346	402	546	547
Choctaw	277	300	335	475	476
Coal	307	344	424	551	643
Craig	296	346	455	545	800
Delaware	306	344	426	572	573
Ellis	335	346	402	546	547
Grant	335	346	402	546	547
Harmon	313	325	404	543	569
Haskell	258	310	397	500	548
Jefferson	324	360	454	657	769
Kingfisher	335	346	402	565	567
Latimer	258	310	397	500	548
McIntosh	324	367	439	549	623
Marshall	307	344	424	551	643
Murray	334	335	401	539	690
Nowata	317	348	432	576	650
Pushmataha	258	310	397	500	548
Seminole	274	338	422	507	518
Washita	313	325	404	543	569

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	335	346	402	546	547
Beaver	335	346	402	546	547
Caddo	262	290	381	456	570
Cimarron	335	346	402	546	547
Cotton	324	360	454	657	769
Custer	318	319	412	589	590
Dewey	335	346	402	546	547
Garvin	278	325	430	565	689
Greer	313	325	404	543	569
Harper	335	346	402	546	547
Hughes	354	403	481	613	614
Johnston	307	344	424	551	643
Kiowa	313	325	404	543	569
McCurtain	246	287	379	492	493
Major	335	346	402	546	547
Mayes	283	393	436	546	624
Noble	321	373	449	624	625
Okfuskee	354	403	481	613	614
Roger Mills	313	325	404	543	569
Tillman	324	360	454	657	769
Woods	296	317	399	580	581

OREGON

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bend, OR	476	552	658	959	983	Deschutes
Corvallis, OR	447	542	675	981	1128	Benton
Eugene-Springfield, OR	447	543	687	961	1070	Lane
Medford, OR	440	523	657	956	978	Jackson
Portland-Vancouver-Beaverton, OR-WA	535	620	717	1044	1255	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR	464	515	616	895	1080	Marion, Polk

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albany-Lebanon, OR	425	515	642	885	1096	Linn
Astoria, OR	392	487	602	871	872	Clatsop
Brookings, OR	425	489	577	843	1017	Curry
City of The Dalles, OR	411	460	573	814	1008	Wasco

OREGON continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Coos Bay, OR	376	456	578	767	883	Coos
Grants Pass, OR	431	494	597	849	942	Josephine
Hood River, OR	402	497	619	881	909	Hood River
Klamath Falls, OR	355	417	531	743	825	Klamath
La Grande, OR	355	413	545	795	805	Union
Ontario, OR-ID	366	417	520	697	735	Malheur
Pendleton-Hermiston, OR	374	425	541	741	838	Morrow, Umatilla
Prineville, OR	372	478	572	774	906	Crook
Roseburg, OR	367	438	565	766	948	Douglas

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	345	402	530	771	785
Grant	399	467	564	764	894
Jefferson	445	474	537	781	879
Lincoln	445	508	648	898	1014
Tillamook	410	490	630	881	903
Wheeler	399	467	564	764	894

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Gilliam	399	467	564	764	894
Harney	357	416	523	723	769
Lake	357	416	523	723	769
Sherman	399	467	564	764	894
Wallowa	352	410	541	774	832

PENNSYLVANIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Allentown-Bethlehem-Easton, PA-NJ	474	577	685	885	937	Carbon, Lehigh, Northampton
Altoona, PA	375	411	497	651	652	Blair
Erie, PA	372	420	542	648	737	Erie
Harrisburg-Carlisle, PA	462	526	663	838	870	Cumberland, Dauphin, Perry
Johnstown, PA	341	347	425	535	613	Cambria
Lancaster, PA	440	522	643	816	857	Lancaster
Lebanon, PA	358	429	554	752	753	Lebanon
Newark-Union, NJ-PA, Division*	733	899	1026	1244	1444	Pike
Philadelphia, PA, Division*	630	738	873	1043	1223	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA	485	534	639	795	857	Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA	446	498	614	821	822	Berks
Scranton--Wilkes-Barre, PA	364	438	523	663	701	Lackawanna, Luzerne, Wyoming
State College, PA	516	575	677	809	831	Centre
Williamsport, PA	365	419	505	663	664	Lycoming
York-Hanover, PA	420	482	612	739	766	York
Youngstown-Warren-Boardman, OH-PA	388	435	526	664	715	Mercer

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bloomsburg-Berwick, PA	397	433	516	656	768	Columbia, Montour
Bradford, PA	395	415	474	635	683	McKean
Chambersburg, PA	366	416	525	691	847	Franklin
DuBois, PA	330	364	433	621	732	Clearfield
East Stroudsburg, PA	483	595	744	950	1063	Monroe
Gettysburg, PA	442	483	578	778	863	Adams
Huntingdon, PA	294	364	452	584	585	Huntingdon
Indiana, PA	419	436	504	602	658	Indiana

PENNSYLVANIA continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Lewisburg, PA	452	471	544	715	769	Union
Lewistown, PA	323	374	459	596	746	Mifflin
Lock Haven, PA	425	426	513	614	630	Clinton
Meadville, PA	375	416	471	625	714	Crawford
New Castle, PA	342	446	525	628	737	Lawrence
Oil City, PA	348	380	453	572	649	Venango
Pottsville, PA	305	398	458	572	629	Schuylkill
St. Marys, PA	383	400	460	596	721	Elk
Sayre, PA	306	410	470	588	720	Bradford
Selinsgrove, PA	328	430	506	633	683	Snyder
Somerset, PA	365	366	439	540	572	Somerset
Sunbury, PA	316	412	460	570	590	Northumberland
Warren, PA	299	384	460	597	632	Warren

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	356	404	467	558	741	Cameron	393	408	472	626	673
Clarion	358	389	431	550	575	Forest	362	386	435	565	578
Fulton	306	390	459	566	662	Greene	387	412	466	557	572
Jefferson	300	371	441	584	585	Juniata	363	393	473	643	644
Potter	389	422	468	620	621	Sullivan	311	417	478	599	713
Susquehanna	381	415	486	584	644	Tioga	404	443	493	648	692
Wayne	458	460	578	722	814						

RHODE ISLAND

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Providence-New Bedford-Fall River, RI-MA	525	583	671	802	989	Bristol, Kent, Newport, Providence, Washington

SOUTH CAROLINA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Anderson, SC	350	455	516	653	672	Anderson
Augusta-Richmond County, GA-SC	448	486	546	730	770	Aiken, Edgefield
Charleston-North Charleston, SC	514	569	644	839	977	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Concord, NC-SC	602	653	726	913	1063	York
Columbia, SC	505	552	612	759	774	Calhoun, Fairfield, Kershaw, Lexington, Richland, Saluda
Florence, SC	361	407	471	564	709	Darlington, Florence
Greenville, SC	483	523	584	769	770	Greenville, Laurens, Pickens
Myrtle Beach-Conway-North Myrtle Beach, SC	518	569	665	795	963	Horry
Spartanburg, SC	449	465	543	683	684	Spartanburg
Sumter, SC	402	437	484	622	658	Sumter

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bennettsville, SC	327	328	394	497	589	Marlboro
Chester, SC	401	402	482	576	612	Chester

SOUTH CAROLINA continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Dillon, SC	332	338	400	500	549	Dillon
Gaffney, SC	385	386	468	561	597	Cherokee
Georgetown, SC	458	459	553	716	865	Georgetown
Greenwood, SC	411	430	494	717	718	Greenwood
Hilton Head Island-Beaufort, SC	549	645	717	876	879	Beaufort, Jasper
Lancaster, SC	316	399	467	642	707	Lancaster
Newberry, SC	373	406	451	573	706	Newberry
Orangeburg, SC	364	394	438	544	674	Orangeburg
Seneca, SC	306	358	470	583	827	Oconee
Union, SC	353	354	425	587	659	Union
Walterboro, SC	276	344	425	601	602	Colleton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	285	396	440	534	540	Allendale	356	385	428	531	687
Bamberg	323	324	389	519	520	Barnwell	366	385	442	532	688
Chesterfield	309	385	437	522	767	Clarendon	407	408	490	587	669
Hampton	350	356	421	519	589	Lee	315	386	461	567	710
McCormick	392	411	472	653	655	Marion	351	352	425	516	522
Williamsburg	407	408	490	587	669						

SOUTH DAKOTA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Rapid City, SD	404	471	591	781	792	Meade, Pennington
Sioux City, IA-NE-SD	379	444	584	735	736	Union
Sioux Falls, SD	450	474	605	788	874	Lincoln, McCook, Minnehaha, Turner

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Aberdeen, SD	347	372	489	613	739	Brown, Edmunds
Brookings, SD	309	388	477	673	838	Brookings
Huron, SD	380	381	457	665	754	Beadle
Mitchell, SD	322	379	496	637	686	Davison, Hanson
Pierre, SD	316	397	489	613	787	Hughes, Stanley
Spearfish, SD	335	407	501	698	745	Lawrence
Vermillion, SD	362	385	506	698	888	Clay
Watertown, SD	329	385	505	644	747	Codington, Hamlin
Yankton, SD	324	384	499	654	655	Yankton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	303	355	467	598	623	Bennett	352	366	467	625	695
Bon Homme	303	355	467	598	623	Brule	303	355	467	598	623
Buffalo	303	355	467	598	623	Butte	352	366	467	625	695
Campbell	341	357	469	619	736	Charles Mix	303	355	467	598	623
Clark	310	369	474	641	756	Corson	352	366	467	625	695
Custer	352	366	467	625	695	Day	341	357	469	619	736
Deuel	310	369	474	641	756	Dewey	352	366	467	625	695
Douglas	303	355	467	598	623	Fall River	351	366	481	624	694

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 37

SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Faulk	341	357	469	619	736
Gregory	303	355	467	598	623
Hand	341	357	469	619	736
Hutchinson	303	355	467	598	623
Jackson	352	366	467	625	695
Jones	352	366	467	625	695
Lake	310	369	474	641	756
McPherson	341	357	469	619	736
Mellette	352	366	467	625	695
Moody	310	369	474	641	756
Potter	352	366	467	625	695
Sanborn	303	355	467	598	623
Spink	341	357	469	619	736
Todd	352	366	467	625	695
Walworth	341	357	469	619	736
Grant	310	369	474	641	756
Haakon	352	366	467	625	695
Harding	352	366	467	625	695
Hyde	303	355	467	598	623
Jerauld	341	357	469	619	736
Kingsbury	310	369	474	641	756
Lyman	303	355	467	598	623
Marshall	341	357	469	619	736
Miner	310	369	474	641	756
Perkins	352	366	467	625	695
Roberts	341	357	469	619	736
Shannon	352	366	467	625	695
Sully	303	355	467	598	623
Tripp	303	355	467	598	623
Ziebach	352	366	467	625	695

TENNESSEE

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Chattanooga, TN-GA	456	482	568	699	823	Hamilton, Marion, Sequatchie
Clarksville, TN-KY	454	471	548	790	800	Montgomery, Stewart
Cleveland, TN	388	397	512	643	817	Bradley, Polk
Jackson, TN	418	456	576	771	772	Chester, Madison
Johnson City, TN	324	392	485	603	753	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA	349	378	468	629	750	Hawkins, Sullivan
Knoxville, TN	399	459	553	740	765	Anderson, Blount, Knox, Loudon, Union
Memphis, TN-MS-AR	512	556	618	824	829	Fayette, Shelby, Tipton
Morristown, TN	380	381	458	601	677	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro, TN	524	599	689	895	900	Cannon, Cheatham, Davidson, Dickson, Hickman, Macon, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, Wilson

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Athens, TN	394	395	475	568	757	McMinn
Brownsville, TN	375	388	508	607	667	Haywood
Columbia, TN	386	482	594	756	757	Maury
Cookeville, TN	372	373	451	644	666	Jackson, Overton, Putnam
Crossville, TN	370	371	447	634	784	Cumberland
Dyersburg, TN	302	355	465	620	677	Dyer
Greeneville, TN	285	359	439	595	596	Greene
Harriman, TN	391	404	469	627	628	Roane
Humboldt, TN	358	366	437	549	607	Gibson
La Follette, TN	352	353	424	546	650	Campbell
Lawrenceburg, TN	296	332	430	532	607	Lawrence
Lewisburg, TN	361	384	503	605	759	Marshall

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING

TENNESSEE continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Martin, TN	312	384	430	629	758	Weakley
McMinnville, TN	361	365	470	630	749	Warren
Newport, TN	264	326	405	485	661	Cocke
Paris, TN	292	342	450	538	655	Henry
Sevierville, TN	449	488	549	660	963	Sevier
Shelbyville, TN	364	446	560	701	702	Bedford
Tullahoma, TN	389	390	477	666	714	Coffee, Franklin, Moore
Union City, TN-KY	292	340	436	571	612	Obion

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	347	348	440	544	597
Carroll	366	367	442	545	609
Clay	356	357	440	571	572
Decatur	315	346	421	541	616
Fentress	356	357	440	571	572
Grundy	272	341	416	546	560
Hardeman	292	362	404	547	709
Henderson	313	415	484	577	594
Humphreys	340	368	409	583	585
Lake	329	368	443	575	576
Lewis	299	348	449	572	573
McNairy	256	301	394	569	570
Monroe	353	354	449	537	685
Perry	299	348	449	572	573
Rhea	269	332	415	551	552
Van Buren	356	357	440	571	572
White	317	322	423	598	599

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bledsoe	272	341	416	546	560
Claiborne	269	343	414	554	621
Crockett	339	368	408	532	534
DeKalb	352	353	424	612	613
Giles	315	370	488	587	599
Hancock	344	345	415	531	639
Hardin	292	326	399	529	530
Houston	347	348	440	544	597
Johnson	287	357	443	594	611
Lauderdale	393	394	474	576	580
Lincoln	369	370	445	544	546
Meigs	272	341	416	546	560
Morgan	362	363	439	549	640
Pickett	356	357	440	571	572
Scott	313	319	377	499	664
Wayne	299	348	449	572	573

TEXAS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Abilene, TX	387	407	514	670	846	Callahan, Jones, Taylor
Amarillo, TX	397	430	537	740	830	Armstrong, Carson, Potter, Randall
Austin-Round Rock, TX*	656	747	912	1240	1435	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX	413	463	554	687	712	Hardin, Jefferson, Orange
Brownsville-Harlingen, TX	362	418	479	592	669	Cameron
College Station-Bryan, TX	483	547	667	844	845	Brazos, Burleson, Robertson
Corpus Christi, TX	509	523	649	892	971	Aransas, Nueces, San Patricio
Dallas-Plano-Irving, TX, Division*	594	667	812	1072	1320	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX	429	460	548	786	932	El Paso
Fort Worth-Arlington, TX, Division*	610	651	800	1083	1219	Johnson, Parker, Tarrant, Wise
Houston-Baytown-Sugar Land, TX*	588	654	793	1057	1331	Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Killeen-Temple-Fort Hood, TX	418	462	587	854	1029	Bell, Coryell, Lampasas

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 39

TEXAS continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Laredo, TX	408	447	535	699	916	Webb
Longview, TX	431	453	520	712	713	Gregg, Rusk, Upshur
Lubbock, TX	375	457	577	816	844	Crosby, Lubbock
McAllen-Edinburg-Pharr, TX	370	407	480	576	661	Hidalgo
Midland, TX	365	395	520	759	899	Midland
Odessa, TX	339	361	472	680	791	Ector
San Angelo, TX	368	424	540	772	844	Irion, Tom Green
San Antonio, TX*	518	573	712	946	1140	Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, Wilson
Sherman-Denison, TX	476	501	589	774	895	Grayson
Texarkana, TX-Texarkana, AR	410	414	510	622	677	Bowie
Tyler, TX	433	509	573	785	858	Smith
Victoria, TX	387	448	573	713	843	Calhoun, Goliad, Victoria
Waco, TX	472	473	588	736	737	McLennan
Wichita Falls, TX	424	447	531	746	747	Archer, Clay, Wichita

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Alice, TX	299	402	447	594	595	Jim Wells
Andrews, TX	318	339	383	533	570	Andrews
Athens, TX	386	400	526	691	692	Henderson
Bay City, TX	306	402	470	685	826	Matagorda
Beeville, TX	391	392	470	631	707	Bee
Big Spring, TX	359	362	433	608	609	Howard
Borger, TX	392	393	471	564	701	Hutchinson
Brenham, TX	443	504	558	783	784	Washington
Brownwood, TX	374	406	512	651	747	Brown
Corsicana, TX	439	447	540	656	662	Navarro
Del Rio, TX	334	400	472	587	684	Val Verde
Dumas, TX	300	369	425	619	619	Moore
Eagle Pass, TX	333	334	400	581	582	Maverick
El Campo, TX	365	410	455	602	603	Wharton
Gainesville, TX	432	433	546	674	685	Cooke
Granbury, TX	449	487	541	733	951	Hood, Somervell
Hereford, TX	258	329	397	577	657	Deaf Smith
Huntsville, TX	466	498	602	775	1003	Walker
Jacksonville, TX	374	410	460	615	640	Cherokee
Kerrville, TX	472	511	575	742	751	Kerr
Kingsville, TX	402	430	483	705	850	Kenedy, Kleberg
Lamesa, TX	356	357	431	556	557	Dawson
Levelland, TX	349	371	448	622	623	Hockley
Lufkin, TX	401	457	511	661	662	Angelina
Marshall, TX	377	379	500	644	645	Harrison
Mineral Wells, TX	397	398	493	681	682	Palo Pinto
Mount Pleasant, TX	367	435	516	620	906	Titus
Nacogdoches, TX	380	476	561	670	918	Nacogdoches
Palestine, TX	420	440	507	667	875	Anderson
Pampa, TX	354	355	457	572	573	Gray, Roberts
Paris, TX	352	408	512	645	721	Lamar
Pecos, TX	318	339	383	491	570	Reeves
Plainview, TX	305	386	454	556	621	Hale
Raymondville, TX	317	344	382	556	619	Willacy
Rio Grande City, TX	268	292	323	471	569	Starr

TEXAS continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Snyder, TX	277	328	420	611	671	Scurry
Stephenville, TX	379	411	513	626	628	Erath
Sulphur Springs, TX	350	404	493	625	865	Hopkins
Sweetwater, TX	322	323	415	535	727	Nolan
Uvalde, TX	304	414	466	607	817	Uvalde
Vernon, TX	281	335	433	556	620	Wilbarger

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bailey	313	360	419	545	691	Baylor	307	364	453	576	685
Blanco	374	402	508	667	764	Borden	356	357	431	556	557
Bosque	386	387	465	565	677	Brewster	334	349	459	549	570
Briscoe	347	349	431	574	575	Brooks	317	344	382	556	619
Burnet	381	446	586	737	738	Camp	394	395	485	662	680
Cass	262	362	402	552	650	Castro	347	349	431	574	575
Childress	347	349	431	574	575	Cochran	313	360	419	545	691
Coke	367	421	537	773	842	Coleman	374	402	508	667	764
Collingsworth	347	349	431	574	575	Colorado	366	404	458	605	608
Comanche	380	408	483	615	642	Concho	356	357	431	556	557
Cottle	307	364	453	576	685	Crane	318	339	383	491	570
Crockett	356	357	431	556	557	Culberson	318	339	383	491	570
Dallam	347	385	508	607	622	DeWitt	324	336	438	572	619
Dickens	313	360	419	545	691	Dimmit	361	362	440	599	710
Donley	347	349	431	574	575	Duval	322	405	467	622	662
Eastland	380	408	483	615	642	Edwards	361	362	440	599	710
Falls	309	422	475	606	629	Fannin	408	411	490	611	613
Fayette	389	441	534	663	664	Fisher	332	333	430	615	668
Floyd	313	360	419	545	691	Foard	307	364	453	576	685
Franklin	348	404	488	598	719	Freestone	309	422	475	621	629
Frio	377	463	563	713	848	Gaines	318	339	383	497	570
Garza	313	360	419	545	691	Gillespie	397	464	610	845	846
Glasscock	356	357	431	556	557	Gonzales	270	308	394	573	574
Grimes	417	458	510	664	665	Hall	347	349	431	574	575
Hamilton	374	402	508	667	764	Hansford	347	349	431	574	575
Hardeman	307	364	453	576	685	Hartley	347	349	431	574	575
Haskell	332	333	430	615	668	Hemphill	347	349	431	574	575
Hill	299	414	459	650	709	Houston	452	485	544	651	668
Hudspeth	318	339	383	491	570	Jack	307	364	453	576	685
Jackson	300	388	461	562	811	Jasper	379	380	456	564	652
Jeff Davis	318	339	383	491	570	Jim Hogg	317	344	382	556	619
Karnes	324	334	437	572	619	Kent	332	333	430	615	668
Kimble	356	357	431	556	557	King	313	360	419	545	691
Kinney	361	362	440	599	710	Knox	307	364	453	576	685
Lamb	313	360	419	545	691	La Salle	361	362	440	599	710
Lavaca	366	404	458	605	608	Lee	376	428	475	650	651
Leon	417	458	510	664	665	Limestone	300	417	461	590	611
Lipscomb	347	349	431	574	575	Live Oak	322	405	467	622	662

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Llano	485	488	642	768	787
Lynn	313	360	419	545	691
McMullen	322	405	467	622	662
Marion	394	395	485	662	680
Mason	356	357	431	556	557
Milam	299	369	459	594	631
Mitchell	332	333	430	615	668
Morris	348	404	488	598	719
Newton	351	352	424	551	743
Oldham	347	349	431	574	575
Parmer	347	349	431	574	575
Polk	379	384	456	546	561
Rains	394	395	491	662	679
Real	361	362	440	599	710
Refugio	322	405	467	622	662
Sabine	351	352	424	551	743
San Saba	374	402	508	667	764
Shackelford	332	333	430	615	668
Sherman	347	349	431	574	575
Sterling	356	357	431	556	557
Sutton	356	357	431	556	557
Terrell	318	339	383	491	570
Throckmorton	332	333	430	615	668
Tyler	380	381	458	590	764
Van Zandt	415	417	510	713	714
Wheeler	347	349	431	574	575
Wood	350	353	466	679	817
Young	305	355	468	594	691
Zavala	361	362	440	599	710

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Loving	318	339	383	491	570
McCulloch	377	378	454	661	662
Madison	417	458	510	664	665
Martin	356	357	431	556	557
Menard	356	357	431	556	557
Mills	374	402	508	667	764
Montague	356	455	507	640	889
Motley	313	360	419	545	691
Ochiltree	347	349	431	602	603
Panola	337	365	405	493	711
Pecos	335	366	406	492	571
Presidio	318	339	383	491	570
Reagan	356	357	431	556	557
Red River	348	404	488	598	719
Runnels	356	357	431	556	557
San Augustine	351	352	424	551	743
Schleicher	356	357	431	556	557
Shelby	308	309	371	533	650
Stephens	332	339	446	614	667
Stonewall	332	333	430	615	668
Swisher	347	349	431	574	575
Terry	313	360	420	552	691
Trinity	452	485	544	651	668
Upton	356	357	431	556	557
Ward	335	339	403	492	571
Winkler	318	339	383	491	570
Yoakum	313	360	419	545	691
Zapata	317	344	382	556	619

UTAH

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Logan, UT-ID	427	459	575	770	952	Cache
Ogden-Clearfield, UT	440	529	652	898	1062	Davis, Morgan, Weber
Provo-Orem, UT	491	540	631	918	1106	Juab, Utah
St. George, UT	487	512	608	883	993	Washington
Salt Lake City, UT*	587	645	764	1093	1278	Salt Lake, Summit, Tooele

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Brigham City, UT	362	444	559	739	860	Box Elder
Cedar City, UT	427	451	519	756	912	Iron
Heber, UT	483	565	744	889	1068	Wasatch
Price, UT	415	416	500	657	771	Carbon
Vernal, UT	371	403	447	587	660	Uintah

UTAH continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	467	468	572	810	862
Duchesne	431	468	519	670	912
Garfield	467	468	572	810	862
Kane	467	468	572	810	862
Piute	467	468	572	810	862
San Juan	431	468	519	670	912
Sevier	467	468	572	810	862
Daggett	431	468	519	670	912
Emery	431	468	519	670	912
Grand	432	471	522	670	916
Millard	467	468	572	810	862
Rich	435	462	578	779	943
Sanpete	467	468	572	810	862
Wayne	467	468	572	810	862

VERMONT

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Burlington-South Burlington, VT	573	632	794	1017	1138	Chittenden, Franklin, Grand Isle

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Barre, VT	448	524	656	886	992	Washington
Bennington, VT	452	566	659	859	1009	Bennington
Berlin, NH-VT	329	429	506	686	800	Essex
Lebanon, NH-VT	496	552	677	912	985	Orange, Windsor
Rutland, VT	408	534	621	821	1051	Rutland

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Addison	453	567	682	897	1196
Lamoille	446	536	624	869	1096
Windham	531	553	727	878	893
Caledonia	427	444	557	705	730
Orleans	321	443	495	625	786

VIRGINIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Blacksburg-Christiansburg-Radford, VA	433	470	521	724	915	Giles, Montgomery, Pulaski, Radford city
Charlottesville, VA	520	625	739	960	1062	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA	330	379	489	610	655	Pittsylvania, Danville city
Harrisonburg, VA	419	466	565	791	792	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA	349	378	468	629	750	Scott, Washington, Bristol city
Lynchburg, VA	421	431	519	641	714	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Richmond, VA*	605	656	732	975	1165	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, Louisa, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 43

VIRGINIA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Roanoke, VA	416	444	573	728	790	Botetourt, Craig, Franklin, Roanoke, Roanoke city, Salem city
Virginia Beach-Norfolk-Newport News, VA-NC*	653	686	788	1087	1361	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division*	872	992	1124	1445	1919	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV	491	522	687	951	952	Frederick, Winchester city

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bluefield, WV-VA	356	357	428	562	677	Tazewell
Martinsville, VA	338	352	439	563	645	Henry, Martinsville city
Staunton-Waynesboro, VA	409	421	549	785	903	Augusta, Staunton city, Waynesboro city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	321	439	494	600	739
Bath	401	417	518	715	863
Brunswick	403	416	485	605	837
Buckingham	376	406	452	581	735
Charlotte	376	406	452	581	735
Dickenson	338	362	406	530	531
Floyd	430	468	519	722	914
Greensville	404	438	486	587	729
Highland	401	417	518	715	863
Lancaster	377	464	565	695	696
Lunenburg	403	416	485	605	837
Mecklenburg	307	383	472	579	772
Northampton	377	464	565	688	694
Nottoway	376	406	452	642	735
Page	318	371	487	628	631
Prince Edward	455	456	548	656	878
Richmond	377	464	565	688	694
Russell	279	370	428	524	526
Smyth	325	353	393	499	646
Westmoreland	381	464	586	804	805

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	299	383	460	559	583
Bland	363	376	436	556	618
Buchanan	363	376	436	556	618
Carroll	364	395	438	525	584
Culpeper	526	536	634	820	871
Essex	377	465	573	780	781
Grayson	363	376	436	556	618
Halifax	275	382	423	568	743
King George	532	533	640	932	932
Lee	250	302	386	496	525
Madison	414	462	558	772	797
Middlesex	377	464	565	688	694
Northumberland	377	464	565	688	694
Orange	376	517	576	838	1011
Patrick	316	344	381	472	485
Rappahannock	414	462	558	772	797
Rockbridge	361	406	452	658	793
Shenandoah	386	414	506	675	748
Southhampton Cou	339	469	520	643	915
Wise	351	358	422	549	692

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wythe	305	386	469	615	825

WASHINGTON

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Bellingham, WA	500	552	693	1011	1139	Whatcom
Bremerton-Silverdale, WA	553	620	764	1093	1194	Kitsap
Kennewick-Richland-Pasco, WA	442	482	605	818	969	Benton, Franklin
Lewiston, ID-WA	414	430	538	765	929	Asotin
Longview, WA	391	492	574	835	951	Cowlitz
Mount Vernon-Anacortes, WA	502	622	774	1056	1318	Skagit
Olympia, WA	521	585	747	1085	1312	Thurston
Portland-Vancouver-Beaverton, OR-WA	535	620	717	1044	1255	Clark, Skamania
Seattle-Bellevue-Everett, WA, Division	691	788	948	1342	1635	King, Snohomish
Spokane, WA	398	466	614	843	956	Spokane
Tacoma, WA, Division	502	573	736	1072	1177	Pierce
Wenatchee, WA	455	484	612	825	951	Chelan, Douglas
Yakima, WA	422	495	640	843	889	Yakima

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Aberdeen, WA	366	429	564	794	795	Grays Harbor
Centralia, WA	395	505	607	811	848	Lewis
Ellensburg, WA	408	476	627	840	872	Kittitas
Moses Lake, WA	361	429	555	750	751	Grant
Oak Harbor, WA	579	582	701	1021	1230	Island
Port Angeles, WA	401	444	577	843	853	Clallam
Pullman, WA	395	435	564	796	975	Whitman
Shelton, WA	444	522	626	855	1013	Mason
Walla Walla, WA	365	426	562	808	810	Walla Walla

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	354	422	541	726	749
Ferry	354	419	541	726	749
Jefferson	457	560	685	996	997
Lincoln	354	419	541	726	749
Pacific	388	418	548	777	808
San Juan	559	601	743	1068	1304
Wahkiakum	387	488	570	830	952
Columbia	365	426	562	758	906
Garfield	365	426	562	758	906
Klickitat	472	479	569	799	800
Okanogan	357	430	505	691	761
Pend Oreille	354	419	541	726	749
Stevens	351	423	540	740	808

WEST VIRGINIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Charleston, WV	385	420	524	667	668	Boone, Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV	309	374	439	592	691	Mineral
Hagerstown-Martinsburg, MD-WV	390	446	555	772	857	Berkeley, Morgan
Huntington-Ashland, WV-KY-OH	*342	405	486	600	617	Cabell, Wayne
Morgantown, WV	403	420	495	643	764	Monongalia, Preston
Parkersburg-Marietta, WV-OH	354	379	485	644	695	Pleasants, Wirt, Wood

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

WEST VIRGINIA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division*	872	992	1124	1445	1919	Jefferson
Weirton-Steubenville, WV-OH	305	374	461	576	625	Brooke, Hancock
Wheeling, WV-OH	299	360	460	578	675	Marshall, Ohio
Winchester, VA-WV	491	522	687	951	952	Hampshire

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Beckley, WV	376	400	451	576	577	Raleigh
Bluefield, WV-VA	356	357	428	562	677	Mercer
Clarksburg, WV	379	380	455	562	648	Doddridge, Harrison, Taylor
Fairmont, WV	319	408	490	586	714	Marion
Oak Hill, WV	369	370	443	548	589	Fayette
Point Pleasant, WV-OH	342	371	412	524	619	Mason

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	325	339	422	553	554
Calhoun	326	388	471	619	703
Grant	391	451	507	664	824
Hardy	391	451	507	664	824
Lewis	323	350	410	514	515
McDowell	341	353	409	558	709
Monroe	365	396	439	547	566
Pendleton	391	451	507	664	824
Randolph	352	353	455	587	593
Roane	326	388	471	619	703
Tucker	325	339	422	553	554
Upshur	290	362	446	599	601
Wetzel	261	356	400	509	579

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Braxton	325	339	422	553	554
Gilmer	325	339	422	553	554
Greenbrier	354	403	446	536	705
Jackson	326	388	471	619	703
Logan	305	370	437	537	538
Mingo	265	357	407	513	666
Nicholas	354	384	426	542	593
Pocahontas	364	378	438	536	636
Ritchie	326	388	471	619	703
Summers	365	396	439	547	566
Tyler	326	388	471	619	703
Webster	364	378	438	536	636
Wyoming	341	353	409	558	709

WISCONSIN

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Appleton, WI	449	463	574	826	828	Calumet, Outagamie
Duluth, MN-WI	343	419	526	663	844	Douglas
Eau Claire, WI	355	424	530	718	748	Chippewa, Eau Claire
Fond du Lac, WI	430	460	554	727	788	Fond du Lac
Green Bay, WI	448	458	578	810	811	Brown, Kewaunee, Oconto
Janesville, WI	422	493	614	804	805	Rock
La Crosse, WI-MN	351	411	541	718	882	La Crosse
Lake County-Kenosha County, IL-WI, Division	649	715	873	1110	1289	Kenosha
Madison, WI	497	623	734	987	1221	Columbia, Dane, Iowa
Milwaukee-Waukesha-West Allis, WI	481	577	694	862	863	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI*	651	763	928	1229	1386	Pierce, St. Croix
Oshkosh-Neenah, WI	398	469	555	727	943	Winnebago
Racine, WI	451	527	661	822	902	Racine
Sheboygan, WI	358	460	543	671	824	Sheboygan
Wausau, WI	355	443	546	729	806	Marathon

WISCONSIN continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Baraboo, WI	380	505	579	778	784	Sauk
Beaver Dam, WI	501	502	605	766	827	Dodge
Iron Mountain, MI-WI	306	370	470	569	769	Florence
Manitowoc, WI	335	392	516	617	768	Manitowoc
Marinette, WI-MI	365	373	439	580	607	Marinette
Menomonie, WI	383	413	518	755	756	Dunn
Merrill, WI	409	410	491	715	716	Lincoln
Monroe, WI	369	398	522	663	774	Green
Platteville, WI	386	387	465	602	816	Grant
Stevens Point, WI	439	445	531	703	704	Portage
Watertown-Fort Atkinson, WI	431	505	665	797	1004	Jefferson
Whitewater, WI	444	522	681	850	864	Walworth
Wisconsin Rapids-Marshfield, WI	333	409	507	617	676	Wood

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	379	416	514	669	670	Ashland	365	367	473	601	814
Barron	325	410	489	624	628	Bayfield	327	382	479	613	636
Buffalo	350	398	508	644	672	Burnett	327	382	479	613	636
Clark	298	352	461	630	631	Crawford	383	410	461	572	705
Door	370	473	569	764	857	Forest	379	416	514	669	670
Green Lake	375	430	499	653	797	Iron	327	382	479	613	636
Jackson	350	398	508	644	672	Juneau	332	409	510	671	672
Lafayette	366	386	496	635	712	Langlade	375	376	452	596	650
Marquette	387	434	528	680	755	Menominee	387	434	528	680	755
Monroe	345	403	531	674	736	Oneida	375	410	538	688	947
Pepin	350	398	508	644	672	Polk	382	447	587	722	723
Price	327	382	479	613	636	Richland	344	384	489	627	628
Rusk	327	382	479	613	636	Sawyer	327	385	479	613	636
Shawano	333	393	484	604	694	Taylor	327	382	479	613	636
Trempealeau	361	362	459	627	628	Vernon	370	372	466	589	642
Vilas	379	416	514	700	701	Washburn	327	382	479	613	636
Waupaca	340	427	519	678	679	Waushara	387	434	528	680	755

WYOMING

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Casper, WY	340	372	470	684	824	Natrona
Cheyenne, WY	401	423	536	730	940	Laramie

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Evanston, WY	325	410	467	638	757	Uinta
Gillette, WY	426	459	514	696	758	Campbell
Jackson, WY-ID	645	711	856	1148	1149	Teton
Laramie, WY	383	439	557	765	810	Albany
Riverton, WY	375	377	479	600	765	Fremont
Rock Springs, WY	313	380	477	667	692	Sweetwater
Sheridan, WY	382	412	506	647	790	Sheridan

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 47

WYOMING continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	380	397	475	620	742	Carbon	296	354	455	570	693
Converse	272	336	418	570	735	Crook	380	397	475	620	742
Goshen	366	367	442	545	750	Hot Springs	380	397	475	620	742
Johnson	380	396	488	620	741	Lincoln	375	444	505	674	796
Niobrara	380	397	475	620	742	Park	356	409	481	604	796
Platte	380	397	475	620	742	Sublette	375	444	505	674	796
Washakie	380	397	475	620	742	Weston	380	397	475	620	742

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	663	712	869	1266	1514						

PUERTO RICO

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Aguadilla-Isabela-San Sebastián, PR	259	282	312	401	448	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Fajardo, PR	325	352	391	568	686	Ceiba, Fajardo, Luquillo
Guayama, PR	251	272	303	428	532	Arroyo, Guayama, Patillas
Mayagüez, PR	323	349	387	463	641	Hormigueros, Mayagüez
Ponce, PR	282	306	339	471	538	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR	293	306	353	461	498	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Caguas-Guaynabo, PR	325	352	391	510	608	Aguas Buenas, Aibonito, Arecibo, Barceloneta, Barranquitas, Bayamón, Caguas, Camuy, Canóvanas, Carolina, Cataño, Cayey, Ciales, Cidra, Comerío, Corozal, Dorado, Florida, Guaynabo, Gurabo, Hatillo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Quebradillas, Río Grande, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR	282	299	339	426	545	Guánica, Guayanilla, Peñuelas, Yauco

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Adjuntas, PR	261	266	311	382	416	Adjuntas
Coamo, PR	255	274	305	415	454	Coamo
Jayuya, PR	258	270	309	414	455	Jayuya
Santa Isabel, PR	263	264	314	418	519	Santa Isabel

SCHEDULE B(1) - FY 2005 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

PUERTO RICO continued

MICROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Utuado, PR	258	270	309	445	455	Utuado

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Culebra	263	284	314	384	387
Maricao	263	284	314	384	387
Vieques	263	284	314	384	387
Las Marías	263	284	314	384	387
Salinas	263	284	314	384	387

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix Island	462	481	583	728	833
St. John/St. Thomas	525	628	808	1001	1046

Note1: The FMRs for unit sizes larger then 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * after the MSA name.

07/20/2004

SCHEDULE B(2) - FY 2005 40% RENTS FOR EXISTING HOUSING for Certain Areas

ARIZONA METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Phoenix-Mesa-Scottsdale, AZ	513	595	719	1048	1229	Maricopa, Pinal

CALIFORNIA METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Oakland-Fremont-Hayward, CA, Division	866	1043	1237	1678	2077	Alameda, Contra Costa
Oxnard-Thousand Oaks-Ventura, CA	842	930	1185	1696	1938	Ventura
Sacramento--Arden-Arcade--Roseville, CA	584	664	810	1167	1339	El Dorado, Placer, Sacramento, Yolo
San Diego-Carlsbad-San Marcos, CA	793	906	1111	1578	1950	San Diego
San Jose-Sunnyvale-Santa Clara, CA	1165	1352	1626	2200	2434	San Benito, Santa Clara
Santa Ana-Anaheim-Irvine, CA, Division	974	1099	1310	1855	2137	Orange

COLORADO METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Denver-Aurora, CO	627	717	908	1273	1485	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park

DISTRICT OF COLUMBIA METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division	827	922	1049	1350	1779	District of Columbia

FLORIDA METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL, Division	686	764	933	1278	1504	Broward
Miami-Miami Beach-Kendall, FL, Division	633	717	869	1113	1302	Miami-Dade
Tampa-St. Petersburg-Clearwater, FL	563	625	757	959	1158	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton-Boynton Beach, FL, Division	636	748	876	1201	1288	Palm Beach

GEORGIA METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Atlanta-Sandy Springs-Marietta, GA	714	775	859	1045	1141	Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar,

GEORGIA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
						Meriwether, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton

ILLINOIS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Chicago-Naperville-Joliet, IL, Division	650	761	855	1023	1145	Cook, DeKalb, DuPage, Grundy, Kane, Kendall, McHenry, Will
St. Louis, MO-IL	517	559	696	896	937	Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe, St. Clair

KANSAS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Kansas City, MO-KS	493	593	686	920	973	Franklin, Johnson, Leavenworth, Linn, Miami, Wyandotte
Wichita, KS	397	447	588	751	843	Butler, Harvey, Sedgwick, Sumner

LOUISIANA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Baton Rouge, LA	447	486	560	713	784	Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana

MARYLAND

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division	827	922	1049	1350	1779	Calvert, Charles, Prince George's

MICHIGAN

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Detroit-Livonia-Dearborn, MI, Division	492	577	666	797	817	Wayne
Grand Rapids-Wyoming, MI	487	522	626	789	793	Barry, Ionia, Kent, Newaygo

SCHEDULE B(2) - FY 2005 40% RENTS FOR EXISTING HOUSING for Certain Areas PAGE 3

MINNESOTA						
METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Minneapolis-St. Paul-Bloomington, MN-WI	633	747	906	1184	1334	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

MISSOURI						
METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Kansas City, MO-KS	493	593	686	920	973	Bates, Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Louis, MO-IL	517	559	696	896	937	Crawford, Sullivan part, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, Washington, St. Louis city

NEVADA						
METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Las Vegas-Paradise, NV	631	741	872	1213	1459	Clark

NEW JERSEY						
METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Newark-Union, NJ-PA, Division	686	842	963	1151	1285	Essex, Hunterdon, Morris, Sussex, Union

NEW MEXICO						
METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Albuquerque, NM	445	518	652	953	1130	Bernalillo, Sandoval, Torrance, Valencia

NEW YORK						
METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Buffalo-Niagara Falls, NY	510	511	614	757	838	Erie, Niagara

NORTH CAROLINA						
METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Virginia Beach-Norfolk-Newport News, VA-NC	618	645	746	1018	1228	Currituck

OHIO

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Cleveland-Elyria-Mentor, OH	474	551	664	852	905	Cuyahoga, Geauga, Lake, Lorain, Medina

OKLAHOMA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Oklahoma City, OK	413	451	549	741	793	Canadian, Cleveland, Grady, Lincoln, Logan, McClain, Oklahoma
Tulsa, OK	442	480	588	776	793	Creek, Okmulgee, Osage, Pawnee, Rogers, Tulsa, Wagoner

PENNSYLVANIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Newark-Union, NJ-PA, Division	686	842	963	1151	1285	Pike
Philadelphia, PA, Division	589	684	812	971	1105	Bucks, Chester, Delaware, Montgomery, Philadelphia

TEXAS

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Austin-Round Rock, TX	617	703	854	1152	1312	Bastrop, Caldwell, Hays, Travis, Williamson
Dallas-Plano-Irving, TX, Division	561	634	767	990	1202	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
Fort Worth-Arlington, TX, Division	576	613	741	987	1099	Johnson, Parker, Tarrant, Wise
Houston-Baytown-Sugar Land, TX	553	612	737	970	1207	Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
San Antonio, TX	487	540	668	859	1048	Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, Wilson

UTAH

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Salt Lake City, UT	557	605	730	1030	1198	Salt Lake, Summit, Tooele

VIRGINIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Richmond, VA	570	616	685	916	1072	Amelia, Caroline, Charles,

SCHEDULE B(2) - FY 2005 40% RENTS FOR EXISTING HOUSING for Certain Areas PAGE 5

VIRGINIA continued

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
						Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, Louisa, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Virginia Beach-Norfolk-Newport News, VA-NC.....	618	645	746	1018	1228	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division.....	827	922	1049	1350	1779	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city

WEST VIRGINIA

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Washington-Arlington-Alexandria, DC-VA-MD-WV, Division.....	827	922	1049	1350	1779	Jefferson

WISCONSIN

METROPOLITAN STATISTICAL AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of CBSA within STATE
Minneapolis-St. Paul-Bloomington, MN-WI.....	633	747	906	1184	1334	Pierce, St. Croix

Note1: The FMRs for unit sizes larger then 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

07/20/2004

SCHEDULE D - FY 2005 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name (Old Area Name*)	Space Rent
California	Los Angeles-Long Beach-Glendale, CA	$485
	Riverside-San Bernardino-Ontario, CA	$386
	San Diego-Carlsbad-San Marcos, CA	$618
	Santa Ana-Anaheim-Irvine, CA (Orange County)	$590
	Vallejo-Fairfield, CA	$487
Colorado	Boulder, CO	$424
	Denver-Aurora, CO	$404
Maryland	Hagerstown-Martinsburg, MD-WV	$265
	Lexington Park, MD (St. Mary's county)	$390
Nevada	Reno-Sparks, NV	$457
New York	Poughkeepsie-Newburgh-Middletown, NY	$416
	Utica-Rome, NY	$239
Oregon	Bend, OR (Deschutes County)	$285
	Portland-Vancouver-Beaverton, OR-WA	$323
	Salem, OR	$400
Pennsylvania	Gettysburg, PA (Adams County)	$428
Washington	Olympia, WA	$472
West Virginia	Bluefield, WV-VA (Mercer County, WV)	$353
	Logan County	$353
	McDowell County	$353
	Mingo County	$353
	Wyoming County	$353

Exceptions cover the new geographic area

[FR Doc. 04–17884 Filed 8–3–04; 11:10 am]
BILLING CODE 4210–62–C

Federal Register

Friday,
August 6, 2004

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, Florida; Proposed Rule and Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT65

Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to establish an additional manatee protection area in Lee County, Florida (Pine Island-Estero Bay Manatee Refuge). We are proposing this action under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), based on our determination that there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In evaluating the need for the proposed designation of an additional manatee protection area, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity at these sites. These factors were the basis for designating this area as a manatee refuge by an emergency rule authorized under the ESA and MMPA on April 7, 2004. The emergency designation is temporary, lasting only 120 days, and will expire on August 5, 2004. We announced in the emergency rule that we would begin proceedings to establish these areas as a manatee refuge through rulemaking; this proposed rule is part of that process. In a federally designated manatee refuge, watercraft are required to proceed at either "slow speed" or at not more than 25 miles per hour, on an annual or seasonal basis, as marked. While adjacent property owners must comply with the speed restrictions, a designation does not preclude ingress and egress to private property. We also announce the availability of a draft environmental assessment for this action. A separate final rule concerning manatee protection in Lee County, FL, is published elsewhere in this issue of the **Federal Register**.

DATES: We will consider comments on both the proposed rule and the draft environmental assessment that are received by October 5, 2004. We will hold a public hearing on September 8, 2004, from 6:30 p.m. to 9:30 p.m. in Fort Myers, Florida. See additional information on the public comment process in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: A formal public hearing will be held at the Harborside Convention Hall, 1375 Monroe Street, in Fort Myers, Florida. The draft Environmental Assessment for this action is available for review upon written request to the Field Supervisor, South Florida Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960.

If you wish to comment on the proposed rule or draft environmental assessment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, South Florida Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Manatee Refuge, 1339 20th Street, Vero Beach, Florida 32960.

2. You may hand-deliver written comments to our South Florida Field Office, at the above address, or fax your comments to (772) 562–4288.

3. You may send comments by electronic mail (e-mail) to *verobeach@fws.gov*. For directions on how to submit electronic comment files, *see* the "Public Comments Solicited" section.

FOR FURTHER INFORMATION CONTACT: Jay Slack or Kalani Cairns (*see* **ADDRESSES** section), telephone (772) 562–3909; or visit our Web site at *http://verobeach.fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee (*Trichecus manatus*) is Federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001), and is further protected under the MMPA (16 U.S.C. 1361–1407). Manatees reside in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20 °Celsius (68 °Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and occasionally are seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA.

Human activities, and particularly waterborne activities, can result in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under section 3(18) of the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased as a function of residential growth and increased visitation. This increased use is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to

exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has also increased. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waters. In 2003, 743,243 vessels were registered in the State of Florida. This represents an increase of 26 percent since 1993. These numbers differ from those in our recently published manatee rules because new data have since become available from the State of Florida. The apparent decline in number of vessels registered between 2001 and 2003 is due to a change in the way registrations are counted. The earlier (2001) numbers included all registrations occurring during the year and therefore double-counted vessels that were sold and re-registered during the same year.

The increase in and projected growth of human use of manatee habitat has had direct and indirect impacts on this endangered species. Direct impacts include injuries and deaths from watercraft collisions, deaths and injuries from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, including decreases in water quality throughout some aquatic habitats, decreases in the quantity of warm water in natural spring areas, the spread of marine debris, and general disturbance from human activities.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, manatee protection areas may be established on an emergency basis when such takings are imminent. Such was the case for the emergency designation of these areas within Lee County as a manatee refuge. The emergency rule was published in the **Federal Register** on April 7, 2004 (69 FR 18279). The emergency designation is temporary, lasting only 120 days, and will expire on August 5, 2004. We announced in the emergency rule that, within 10 days after establishing the emergency protection area, in accordance with this section, the Service would begin proceedings to establish the area in accordance with 50 CFR 17.103.

As defined in 50 CFR 17.102, we may establish two types of manatee protection areas: manatee refuges and manatee sanctuaries. A manatee refuge is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Reasons for Proposing a Manatee Refuge

In deciding to propose this rule, we reviewed a recent State court ruling overturning State-designated manatee speed zones in Lee County (*State of Florida Fish and Wildlife Conservation Commission* v. *William D. Wilkinson, Robert W. Watson, David K. Taylor, James L. Frock [2 cases], Jason L. Fluharty, Kenneth L. Kretsh, Harold Stevens, Richard L. Eyler, and John D. Mills,* County Court of the 20th Judicial Circuit) as well as the best available information to evaluate manatee and human interactions in the former State-speed zones affected by the ruling.

In the *State of Florida Fish and Wildlife Conservation Commission (FFWCC)* v. *Wilkinson, et al.,* boaters, who were issued citations for alleging different violations of Rule 68C–22.005 (Rule), challenged the Rule adopted by the FFWCC regulating the operation and speed of motorboat traffic in Lee County waters to protect manatees. In its ruling the court determined that under Florida law the FFWCC can regulate the operation and speed of motorboats in order to protect manatees from harmful collisions with motorboats, however: (1) In the area to be regulated, manatee sightings must be frequently frequent and, based upon available scientific information, it has been determined that manatees inhabit these areas on a regular, periodic or continuous basis; and (2) when the FFWCC adopts rules it must consider the rights of voters, fishermen and water-skiers and the restrictions adopted by the FFWCC must not unduly interfere with those rights. In this instance the court found that the Rule for four of the regulated areas did not meet the State standard for the frequency of sightings and the rule unduly interfered with the rights of voters. Thus, the designated manatee protection zones were invalidated and the citations were dismissed. The absence of zones and enforcement in these areas increases the potential for manatees to suffer injury and death from watercraft collisions. The Court's ruling does not affect Federal speed zones in Lee County. The Service established Shell Island as a manatee refuge in November 2002 (67 FR 68450) and the Caloosahatchee River–San Carlos Bay as a manatee refuge in August 2003 (68 FR 46870).

The legal basis for the action to be taken by the Service differs markedly from that in the *FFWCC* v. *Wilkinson case.* The Service's action is not based on state law but rather is based upon a federal regulation, 50 CFR 17.103 which provides the standard for designation of a manatee protected area. Specifically, this regulation provides that the Director may establish a manatee protection area "* * * whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

Manatees are especially vulnerable to fast-moving power boats. The slower a boat is traveling, the more time a manatee has to avoid the vessel and the more time the boat operator has to detect and avoid the manatee. Nowacek *et al.* (2000) documented manatee avoidance of approaching boats. Wells *et al.* (1999) confirmed that, at a response distance of 20 meters, a manatee's time to respond to an oncoming vessel increased by at least 5 seconds if the vessel was traveling at slow speed. Therefore, the potential for take of manatees can be greatly reduced if boats are required to travel at slow speed in areas where manatees can be expected to occur.

The waterbodies encompassed in this proposed designation receive extensive manatee use either on a seasonal or year-round basis as documented in radio telemetry and aerial survey data (FWC 2003). The areas contain feeding habitats and serve as travel corridors for manatees (FWC 2003). Although residents are likely accustomed to the presence of speed zones in the area, which existed as State regulations since 1999, some of those regulations are no longer in effect. Therefore, without this proposed Federal designation,

watercraft can be expected to travel at high speeds in areas frequented by manatees, which would result in the take of one or more manatees. Also, while the State court invalidated State-designated speed limits in the areas adjacent to navigation channels, it did not invalidate the 25-mile-per-hour speed limit in the navigation channels that traverse the affected area. Therefore, the speed limit in the navigation channel is now lower than that of the surrounding, shallower areas. As a result, shallow-draft high-speed boats capable of traveling outside the navigation channels can be expected to be operated at high speeds (greater than 25 miles per hour) in the areas more likely to be frequented by manatees. In the areas encompassed by this proposed designation that receive more seasonal use by manatees, the slow speed requirements would begin on April 1.

There is a history of manatee mortalities in the area as a result of collisions with watercraft. At least 14 carcasses of manatees killed in collisions with watercraft have been recovered in or immediately adjacent to the designated areas since 1999 (FWC 2003), and two more carcasses have been recovered recently from sites that were former State speed zones eliminated by the Court's ruling. Necropsies revealed that these animals died of wounds from a boat collision.

Manatees make extensive use of these areas; there is a history of take at these sites; future take will occur without the protection measures; protection measures will be insufficient upon expiration of the emergency designation; and we do not anticipate any alternative protection measures being enacted by State or local government in sufficient time to reduce the likelihood of take occurring. For these reasons, we believe that substantial evidence shows that establishment of a manatee refuge is necessary to prevent the take of one or more manatees in these areas. The proposed refuge covers the exact same areas as those set forth in the April 7, 2004, emergency rule (69 FR 18279).

Definitions

The following terms are defined in 50 CFR 17.102. We present them here to aid in understanding this proposed rule.

"Planing" means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

"Slow speed" means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not proceeding at slow speed if it is: (1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft is proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

"Wake" means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

"Water vehicle, watercraft," and "vessel" include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

Area Proposed for Designation as a Manatee Refuge

Pine Island–Estero Bay Manatee Refuge

The Pine Island–Estero Bay Manatee Refuge encompasses waterbodies in Lee County including portions of Matlacha Pass and San Carlos Bay south of Green Channel Marker 77 and north of the Intracoastal Waterway, portions of Pine Island Sound in the vicinity of York and Chino Islands, portions of Punta Rassa Cove and Shell Creek in San Carlos Bay and the mouth of the Caloosahatchee River, and portions of Estero Bay and associated waterbodies. These waterbodies are designated, as posted, as either slow speed or with a speed limit of 25 miles per hour, on either a seasonal or annual basis. Legal descriptions and maps are provided in the "Regulation Promulgation" section of this notice.

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why this area, particularly the waters known as Long Cut and Short Cut as well as any shallow water embayments within the proposed area, should or should not be designated as manatee refuges, including data in support of these reasons;

2. Current or planned activities in the subject areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed designations;

4. Potential adverse effects to the manatee associated with designating manatee protection areas for the species; and

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed designations that would provide comparable or improved manatee protection.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling (772) 562–3909 or from our Web site at *http://verobeach.fws.gov*.

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII) and should not use special characters and encryption. Please also include "Attn: RIN 1018–AT65," your full name, and return address in your e-mail message. Comments submitted to *verobeach@fws.gov* will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our South Florida Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or

businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We will consider all comments and information received during the 60-day comment period on this proposed rule prior to a determination and will refine this proposal, if and when appropriate. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action, as it may raise novel legal or policy issues. OMB has reviewed this rule.

a. Based on experience with similar rulemakings in this area, this proposed rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. It is not expected that any significant economic impacts would result from the establishment of a manatee refuge (approximately 30 miles of waterways) in Lee County in the State of Florida.

The purpose of this proposed rule is to establish a manatee refuge in Lee County, Florida. We are proposing to prevent the take of manatees by controlling certain human activity in this county. For the proposed manatee refuge, the areas are year-round or seasonal slow speed, or year-round or seasonal speed limits of 25 miles per hour. Affected waterborne activities include, but are not limited to, transiting, cruising, water skiing, fishing, marine construction, and the use of all water vehicles. This proposed rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this proposed rule. Conversely, the proposed rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the proposed rule against a "baseline," which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that the Pine Island–Estero Bay area has no regulating speed limits other than the 25 miles per hour in the navigation channels. The State-designated speed zones, other than in the navigation channels, have been voided by a State Court decision. However, residents and other water users have lived with speed restrictions in this area since 1999 and have established business and recreational patterns on the water to accommodate their needs and desires for water-based recreation. Even though the baseline is set at no speed zones, the actual economic effects may very well be insignificant because almost all users have been previously subject to these restrictions. Thus, the proposed rule is expected to have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this proposed rule would be due to the changes in speed zone restrictions in the manatee refuge area. These speed zone changes are summarized in the proposed rule.

In addition to speed zone changes, the proposed rule no longer allows for the speed zone exemption process in place under State regulations. Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain commercial activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. Speed zone exemptions were issued to 27 permit holders (one permit holder did not renew during the last cycle) in the former State zones that comprise the proposed manatee refuge area.

In order to gauge the economic effect of this proposed rule, both benefits and costs must be considered. Potential economic benefits related to this proposed rule include increased manatee protection and tourism related to manatee viewing, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the proposed rule and affected waterborne activities. Economic costs are measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, the proposed rule may have some impact on commercial fishing because of the need to maintain slower speeds in some areas. The extension of slower speed zones in this proposed rule is not expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over $100 million).

Economic Benefits

We believe that the proposed designation of the Pine Island–Estero Bay Manatee Refuge in this proposed rule will increase the level of manatee protection in these areas. A potential economic benefit is increased tourism resulting from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this proposed rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of less disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this proposed rule produces some economic benefits. However, given the

lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact of the designation of a manatee refuge results from the fact that, in certain areas, boats are required to go slower than under current conditions. Some impacts may be felt by recreationists who have to use alternative sites for their activity or who have a reduced quality of the waterborne activity experience throughout the designated site because of the proposed rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the proposed rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the proposed rule. We hope to gather more information on the economic costs during the public comment period.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity, or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the proposed manatee refuge. The resulting potential economic impacts are discussed below. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use undesignated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact. Until recently, speed zones were in place in this area, and recreationists have adjusted their activities to accommodate them.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Pine Island–Estero Bay area is currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because these boats are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact. According to one professional guide with a State speed zone exemption permit, the exemption is important to him financially. The exemption allows him to take clients to areas where they spend more time fishing instead of traveling to fish, an important requirement for paying customers. Without the exemption, he doesn't take clients on a half-day charter to fish an area with an idle or slow speed zone at the risk of losing the charter. As his primary source of income, the loss of a charter has a significant affect on his ability to make a living. Instead, he will travel to areas where there are no speed zones in order for his clients to fish.

Affected Commercial Fishing Activities

Several commercial fisheries will experience some impact due to the regulation. To the extent that the regulation establishes additional speed zones in commercial fishing areas, this will increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in the Pine Island–Estero Bay area cannot be quantified. The designation will likely affect commercial fishermen by way of added travel time, which can result in an economic impact. Some of the 27 active permit holders with speed limit exemptions are commercial fishermen. According to one commercial mullet fisherman with a State permit, the exemption is worthless to him. The State's permit exempts him from the speed zones restrictions in Matlacha Pass; however, the schools of mullet which he targets are primarily in the Caloosahatchee River, an area where he cannot get an exemption because of the Caloosahatchee River Manatee Refuge established in 2003. Nevertheless, because a manatee refuge designation will not prohibit any commercial fishing activity and because there is a channel available for boats to travel up to 25 miles per hour in the affected areas, the Service believes that it is unlikely that the proposed rule will result in a significant economic impact on the commercial fishing industry. It is important to note that, in 2001, the total annual value of potentially affected fisheries was approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this proposed rule.

Agency Administrative Costs

The cost of implementing the proposed rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. The Service expects to spend approximately $600,000 (2002$) for posting and signing 15 previously designated manatee protection areas (an average of $40,000 per area). This represents the amount that the Service will pay contractors for creation and installation of manatee refuge signs. While the number and location of signs needed to post the Pine Island–Estero Bay manatee refuge is not known, the cost of manufacturing and posting signs to delineate the manatee refuge in this proposed rule is not expected to exceed the amount being spent to post previously designated manatee protection areas (Service 2003a). Furthermore, there are unknown additional costs associated with the semi-annual requirement for seasonal conversion (flipping) of regulatory signs as well as routine maintenance of these posts and signs. In addition, the Service anticipates that it will spend additional funds for enforcement of a newly designated manatee refuge if a final rule is published. These costs, including the cost of fuel, cannot be accurately estimated at this time. The costs of enforcement may also include hiring and training new manatee enforcement

officers and special agents as well as the associated training, equipment, upkeep, and clerical support (Service 2003b). Finally, there are some costs for education and outreach to inform the public about this new manatee refuge area.

While the State of Florida has 12,000 miles of rivers and 3 million acres of lakes, this proposed rule will affect approximately 30 waterway miles. The speed restrictions in this proposed rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the proposed rule will impact the quality of waterborne activity experiences for some recreationists and may lead some recreationists to forgo the activity. This proposed rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this proposed rule. The distance that recreationists may have to travel to reach an undesignated area varies. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower in some areas may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the manatee refuge is not expected to be significant (*i.e.*, an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuge is unknown, these benefits would cause a reduction in the economic impact of the proposed rule.

b. This rule will not create inconsistencies with other agencies' actions. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating the Pine Island–Estero Bay area, where previously existing State designations have been eliminated, to prevent the taking of one or more manatees in that area.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the sites would result from this proposed rule. No entitlements, grants, user fees, loan programs or effects on the rights and obligations of their recipients are expected to occur.

d. OMB has determined that this rule may raise novel legal or policy issues. Therefore, OMB has reviewed this proposed rule pursuant to E.O. 12866.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the proposed rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of the manatee refuge. Currently, no information is available on the specific number of small entities that are potentially affected. However, 27 active permit holders (one applicant did not renew his/her exemption during the last cycle) were exempt from the State speed limits in the proposed refuge area. Because these zones have been in place since 1999, people have adjusted to them, and there were no other permit holders, it is reasonable to expect that the proposed rule will impact only the 27 permit holders in the former State speed zones. They are primarily commercial fishing boats and fishing guides. Both would be considered small businesses. The 27 permit holders had State exemptions from the speed restrictions based on an application that stated they would suffer at least a 25 percent income loss without the permit. The usual income level for these businesses is not known, however a 25 percent loss of business income is significant regardless of the level of business income. We acknowledge that there could be a significant loss of income to those permit holders who rely on speed to carry out their business activities; however, the Service believes that the 27 permit holders do not constitute a substantial number.

This proposed rule will add to travel time for recreational boating and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on most small businesses resulting from this proposed rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 mph in the navigation channels, we believe that any economic effect on small commercial fishing or charter boat entities (other than the 27 permit holders) will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

The employment characteristics of Lee County are shown in Table 1 for the year 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of a manatee refuge:

Fishing, hunting, trapping (SIC 09)
Water transportation (SIC 44)
Miscellaneous retail (SIC 59)
Amusement and recreation services (SIC 79)
Non-classifiable establishments (NCE)

TABLE 1.—EMPLOYMENT CHARACTERISTICS OF LEE COUNTY IN FLORIDA—1997 (INCLUDES SIC CODES 09, 44, 59, 79, AND NCE[A]

County	Total mid-March employment (all industries)	Mid-March employment[b] (select SIC (codes)	Total establishments (all industries)	Select SIC codes (Includes SIC codes 09, 44, 59, 79, and NCE[a]				
				Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19) employees)	Number of establishments (20+ employees)
Lee	135,300	7,734	11,386	974	602	193	92	87

[a] Descriptions of the SIC codes included in this table as follows: SIC 09—Fishing, hunting, and trapping; SIC 44—Water transportation; SIC 59—Miscellaneous retail service division; SIC 79—Amusement and recreation services; and NCE—Non-classifiable establishments division.
[b] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.
Source: U.S. Census County Business Patterns (*http://www.census.gov/epcd/cbp/view/cbpview.html*).

As shown in Table 1, the vast majority (over 80 percent) of these business establishments in Lee County have fewer than ten employees, with the largest number of establishments employing fewer than four employees. Any economic impacts associated with this proposed rule will affect some proportion of these small entities.

Since the proposed designation is for a manatee refuge, which only requires a reduction in speed, we do not believe the designation would cause significant economic effect on a substantial number of small businesses. Currently available information does not allow us to quantify the number of small business entities such as charter boats or commercial fishing entities that may incur direct economic impacts due to the inconvenience of added travel times resulting from the proposed rule, but certainly the 27 current permit holders have potential for inclusion in this category for this proposed rule. The Service does not believe the 27 permit holders constitute a substantial number. Public comments on this proposed rule will be used for further refinement of the impact on small entities and the general public, should the final rule establish this area as a permanent manatee refuge. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists who will change their behavior, and how their behavior will change, is unknown; therefore, the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas and the fact that speed zones were in place until recently, we believe that this designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this proposed rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the affected county. An unknown portion of the establishments shown in Table 1 could be affected by this proposed rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this proposed rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 miles per hour in the navigational channels, we believe that any economic impact on most small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this proposed rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 25-miles-per-hour navigational channels, this impact is likely to be limited. Further, only 27 active permit holders were exempt from the former State speed zones. The impact will most likely stem from only these permit holders.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this proposed rule may generate some level of inconvenience to recreationists and commercial users due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries will not impose obligations that have not previously existed on State or local governments.

b. This proposed rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over publicly-owned submerged water bottoms.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This proposed rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed regulation does not contain collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with criteria of the National Environmental Policy Act. This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. An Environmental Assessment has been prepared and is available for review by written request to the Field Supervisor (*see* **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to continue their operation as they have in the past, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the South Florida Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Kalani Cairns (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108 by revising paragraph (c)(13) to read as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(13) *The Pine Island–Estero Bay Manatee Refuge.* (i) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, south of a line that bears 90° and 270° from Matlacha Pass Green Channel Marker 77 (approximate latitude 26°40′00″ North, approximate longitude 82°06″00′ West), and north of Pine Island Road (State Road 78), excluding:

(A) The portion of the marked channel otherwise designated in paragraph (c)(15)(iii) of this section;.

(B) All waters of Buzzard Bay east and northeast of a line beginning at a point (approximate latitude 26°40′00″ North, approximate longitude 82°05′20″ West) on the southwest shoreline of an unnamed mangrove island east of Matlacha Pass Green Channel Marker 77 and bearing 219° to the northeasternmost point (approximate latitude 26°39′58″ North, approximate longitude 82°05′23″ West) of another unnamed mangrove island, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′36″ North, approximate longitude 81°05′09″ West), then bearing 115° to the westernmost point (approximate latitude 26°39′34″ North, approximate longitude 82°05′05″ West) of the unnamed mangrove island to the southeast, then running along the western shoreline of said island to its southwesternmost point (approximate latitude 26°39′22″ North, approximate longitude 82°04′53″ West), then bearing 123° to the northwesternmost point (approximate latitude 26°39′21″ North, approximate longitude 82°04′52″ West) of an unnamed mangrove island, then running along the western shoreline of said island to its southeasternmost point (approximate latitude 26°39′09″ North, approximate longitude 82°04′44″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°39′08″ North, approximate longitude 82°04′41″ West) of a peninsula on the unnamed mangrove island to the southeast, then running along the southwestern shoreline of said island to its southeasternmost point (approximate latitude 26°38′51″ North, approximate longitude 82°04′18″ West), then bearing 99° to the southernmost point (approximate latitude 26°38′50″ North, approximate longitude 82°04′03″ West) of the unnamed mangrove island to the east, then bearing 90° to the line's terminus at a point (approximate latitude 26°38′50″ North, approximate longitude 82°03′55″ West) on the eastern shoreline of Matlacha Pass; and

(C) All waters of Pine Island Creek and Matlacha Pass north of Pine Island Road (State Road 78) and west and

southwest of a line beginning at a point (approximate latitude 26°39'2m29" North, approximate longitude 82°06'29" West) on the western shoreline of Matlacha Pass and bearing 160° to the westernmost point (approximate latitude 26°39'25" North, approximate longitude 82°06'28" West) of an unnamed island, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°39'18" North, approximate longitude 82°06'24" West), then bearing 128° to the northernmost point (approximate latitude 26°39'12" North, approximate longitude 82°06'17" West) of an unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39'00" North, approximate longitude 82°06'09" West), then bearing 138° to a point (approximate latitude 26°38'45" North, approximate longitude 82°05'53" West) on the northern shoreline of Bear Key, then running along the northern shoreline of Bear Key to its easternmost point (approximate latitude 26°38'44" North, approximate longitude 82°05'46" West), then bearing 85° to the westernmost point (approximate latitude 26°38'45" North, approximate longitude 82°05'32" West) of Deer Key, then running along the northern shoreline of Deer Key to its easternmost point (approximate latitude 26°38'46" North, approximate longitude 82°05'22" West), then bearing 103° to the northwesternmost point (approximate latitude 26°38'45" North, approximate longitude 82°05'17" West) of the unnamed mangrove island to the east, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°38'30" North, approximate longitude 82°05'04" West), then bearing 106° to the westernmost point (approximate latitude 26°38'30" North, approximate longitude 82°04'57" West) of the unnamed island to the southeast, then running along the northern and eastern shorelines of said island to a point (approximate latitude 26°38'23" North, approximate longitude 82°04'51" West) on its eastern shoreline, then bearing 113° to the northernmost point of West Island (approximate latitude 26°38'21" North, approximate longitude 82°04'37" West), then running along the western shoreline of West Island to the point where the line intersects Pine Island Road (State Road 78).

(ii) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, St. James Creek, and San Carlos Bay, south of Pine Island Road (State Road 78), north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway, west of a line that bears 302° from Intracoastal Waterway Green Channel Marker 99 (approximate latitude 26°31'00" North, approximate longitude 82°00'52" West), and east of a line that bears 360° from Intracoastal Waterway Red Channel Marker 10 (approximate latitude 26°29'16" North, approximate longitude 82°03'35" West), excluding:

(A) The portions of the marked channels otherwise designated in paragraphs (c)(15) (iv) and (v) of this section;

(B) All waters of Matlacha Pass south of Pine Island Road (State Road 78) and west of the western shoreline of West Island and a line beginning at the southernmost point (approximate latitude 26°37'25" North, approximate longitude 82°04'17" West) of West Island and bearing 149° to the northernmost point (approximate latitude 26°37'18" North, approximate longitude 82°04'12" West) of the unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southernmost point (approximate latitude 26°36'55" North, approximate longitude 82°04'02" West), then bearing 163° to the line's terminus at a point (approximate latitude 26°36'44" North, approximate longitude 82°03'58" West) on the eastern shoreline of Little Pine Island;

(C) All waters of Matlacha Pass, Pontoon Bay, and associated embayments south of Pine Island Road (State Road 78) and east of a line beginning at a point (approximate latitude 26°38'12" North, approximate longitude 82°03'46" West) on the northwestern shoreline of the embayment on the east side of Matlacha Pass, immediately south of Pine Island Road and then running along the eastern shoreline of the unnamed island to the south to its southeasternmost point (approximate latitude 26°37'30" North, approximate longitude 82°03'22" West), then bearing 163° to the northwesternmost point of the unnamed island to the south, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°37'15" North, approximate longitude 82°03'15" West), then bearing 186° to the line's terminus at a point (approximate latitude 26°37'10" North, approximate longitude 82°03'16" West) on the eastern shoreline of Matlacha Pass;

(D) All waters of Pine Island Creek south of Pine Island Road (State Road 78); and all waters of Matlacha Pass, Rock Creek, and the Mud Hole, west of a line beginning at a point (approximate latitude 26°33'52" North, approximate longitude 82°04'53" West) on the western shoreline of Matlacha Pass and bearing 22° to a point (approximate latitude 26°34'09" North, approximate longitude 82°04'45" West) on the southern shoreline of the unnamed island to the northeast, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34'15" North, approximate longitude 82°04'39" West) on its northeastern shoreline, then bearing 24° to a point (approximate latitude 26°34'21" North, approximate longitude 82°04'36" West) on the southern shoreline of the large unnamed island to the north, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34'31" North, approximate longitude 82°04'29" West) on its eastern shoreline, then bearing 41° to the southernmost point (approximate latitude 26°34'39" North, approximate longitude 82°04'22" West) of another unnamed island to the northeast, then running along the eastern shoreline of said island to its northwesternmost point (approximate latitude 26°35'22" North, approximate longitude 82°04'07" West), then bearing 2° to the southernmost point (approximate latitude 26°35'32" North, approximate longitude 82°04'07" West) of the unnamed island to the north, then running along the eastern shoreline of said island to its northernmost point (approximate latitude 26°35'51" North, approximate longitude 82°03'59" West), then bearing 353° to the line's terminus at a point (approximate latitude 26°36'08" North, approximate longitude 82°04'01" West) on the eastern shoreline of Little Pine Island; and

(E) All waters of Punta Blanca Bay and Punta Blanca Creek, east of the eastern shoreline of Matlacha Pass and east and north of the eastern and northern shorelines of San Carlos Bay.

(iii) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of Green Channel Marker 77 (approximate latitude 26°40'00" North, approximate longitude 82°06'00" West) and north of a line perpendicular to the channel at a point in the channel ¼ mile northwest of the Pine Island Road Bridge (State Road 78).

(iv) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of a line perpendicular to the channel at a point in the channel ¼ mile southeast of the Pine Island Road Bridge (State Road 78), and north of a line 500 feet northwest of and parallel to the main marked

channel of the Intracoastal Waterway (just north of Green Channel Marker 1).

(v) Watercraft may not exceed 25 miles per hour, all year, in all waters within the marked channel in Matlacha Pass that intersects the main Matlacha Pass channel near Green Channel Marker 15 (approximate latitude 26°31′57″ North, approximate longitude 82°03′38″ West) and intersects the main marked channel of the Intracoastal Waterway near Green Channel Marker 101 (approximate latitude 26°30′39″ North, approximate longitude 82°01′00″ West).

(vi) Watercraft are required to proceed at slow speed from April 1 through November 15 in all canals and boat basins of St. James City and the waters known as Long Cut and Short Cut; and all waters of Pine Island Sound and San Carlos Bay south of a line beginning at the southernmost tip (approximate latitude 26°31′28″ North, approximate longitude 82°06′19″ West) of a mangrove peninsula on the western shore of Pine Island approximately 2,200 feet north of Galt Island and bearing 309° to the southeasternmost point (approximate latitude 26°31′32″ North, approximate longitude 82°06′25″ West) of another mangrove peninsula, then running along the southern shoreline of said peninsula to its southwesternmost point (approximate latitude 26°31′40″ North, approximate longitude 82°06′38″ West), then bearing 248° to a point (approximate latitude 26°31′40″ North, approximate longitude 82°06′39″ West) on the eastern shoreline of an unnamed mangrove island, then running along the southern shoreline of said island to its southwesternmost point (approximate latitude 26°31′39″ North, approximate longitude 82°06′44″ West), then bearing 206° to the line's terminus at the northernmost point of the Mac Keever Keys (approximate latitude 26°31′09″ North, approximate longitude 82°07′09″ West), east of a line beginning at said northernmost point of the Mac Keever Keys and running along and between the general contour of the western shorelines of said keys to a point (approximate latitude 26°30′27″ North, approximate longitude 82°07′08″ West) on the southernmost of the Mac Keever Keys, then bearing 201° to a point (approximate latitude 26°30′01″ North, approximate longitude 82°07′19″ West) approximately 150 feet due east of the southeasternmost point of Chino Island, then bearing approximately 162° to Red Intracoastal Waterway Channel Marker 22 (approximate latitude 26°28′57″ North, approximate longitude 82°06′55″ West), then bearing approximately 117° to the line's terminus at Red Intracoastal Waterway Channel Marker 20 (approximate latitude 26°28′45″ North, approximate longitude 82°06′38″ West), north of a line beginning at said Red Intracoastal Waterway Channel Marker 20 and bearing 86° to a point (approximate latitude 26°28′50″ North, approximate longitude 82°05′48″ West) ¼ mile south of York Island, then running parallel to and ¼ mile south of the general contour of the southern shorelines of York Island and Pine Island to the line's terminus at a point on a line bearing 360° from Red Intracoastal Waterway Channel Marker 10 (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), and west and southwest of the general contour of the western and southern shorelines of Pine Island and a line that bears 360° from said Red Intracoastal Waterway Channel Marker 10, excluding the portion of the marked channel otherwise designated in paragraph (c)(15)(vii) of this section.

(vii) Watercraft may not exceed 25 miles per hour from April 1 through November 15 in all waters of the marked channel that runs north of the power lines from the Cherry Estates area of St. James City into Pine Island Sound, east of the western boundary of the zone designated in paragraph (c)(15)(vi) of this section, and west of a line perpendicular to the power lines that begins at the easternmost point (approximate latitude 26°30′25″ North, approximate longitude 82°06′15″ West) of the mangrove island on the north side of the power lines approximately 1,800 feet southwest of the Galt Island Causeway.

(viii) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and Punta Rassa Cove east of a line that bears 352° from the northernmost tip of the northern peninsula on Punta Rassa (approximate latitude 26°29′44″ North, approximate longitude 82°00′33″ West), and south of a line that bears 122° from Intracoastal Waterway Green Channel Marker 99 (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), including all waters of Shell Creek and associated waterways.

(ix) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and the Caloosahatchee River, including the residential canals of Cape Coral, northeast of a line that bears 302° and 122° from Intracoastal Waterway Green Channel Marker 99 (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), west of a line that bears 346° from Intracoastal Waterway Green Channel Marker 93 (approximate latitude 26°31′37″ North, approximate longitude 81°59′46″ West), and north and northwest of the general contour of the northwestern shoreline of Shell Point and a line that bears approximately 74° from the northernmost tip (approximate latitude 26°31′31″ North, approximate longitude 81°59′57″ West) of Shell Point to said Intracoastal Waterway Green Channel Marker 93, excluding the Intracoastal Waterway between markers 93 and 99 (which is already designated as a Federal manatee protection area, requiring watercraft to proceed at slow speed, and is not impacted by this proposed rulemaking).

(x) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hell Peckney Bay southeast of Hurricane Bay, northeast of the northern shorelines of Julies Island and the unnamed island immediately northwest of Julies Island and a line that bears 312° from the northwesternmost point of Julies Island (approximate latitude 26°26′37″ North, approximate longitude 81°54′57″ West), northwest of Estero Bay, and southwest of a line beginning at the southernmost point (approximate latitude 26°27′23″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove peninsula in northwest Hell Peckney Bay and bearing 191° to the northernmost point (approximate latitude 26°27′19″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove island, then running along the northern shoreline of said island to its southeasternmost point (approximate latitude 26°27′11″ North, approximate longitude 81°55′05″ West), then bearing 115° to a point (approximate latitude 26°27′03″ North, approximate longitude 81°54′47″ West) on the northwest shoreline of an unnamed mangrove island, then running along the northern shoreline of said island to its northeasternmost point (approximate latitude 26°27′02″ North, approximate longitude 81°54′33″ West), and then bearing 37° to the line's terminus at the westernmost point of an unnamed mangrove peninsula in eastern Hell Peckney Bay.

(xi) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hendry Creek south of a line that bears 270° from a point (approximate latitude 26°28′40″ North, approximate longitude 81°52′56″ West) on the eastern shoreline of Hendry Creek; and all waters of Estero Bay southeast and east of Hell Peckney Bay, a line that bears 340° from a point (approximate latitude 26°25′56″ North, approximate longitude 81°54′25″ West) on the northern tip of an unnamed

mangrove peninsula on the northeastern shoreline of Estero Island, and the northern shoreline of Estero Island, south of Hendry Creek and a line that bears 135° and 315° from Red Channel Marker 18 (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West) in Mullock Creek, and north of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, including the waters of Buccaneer Lagoon at the southern end of Estero Island, but excluding:

(A) The portions of the marked channels otherwise designated in paragraph (c)(15)(xiii) of this section;

(B) The Estero River; and

(C) To waters of Big Carlos Pass east of a line beginning at a point (approximate latitude 26°24′34″ North, approximate longitude 81°53′05″ West) on the eastern shoreline of Estero Island and bearing 36° to a point (approximate latitude 26°24′40″ North, approximate longitude 81°53′00″ West) on the southern shoreline of Coon Key, south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and west of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of said unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island.

(xii) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Estero Bay and Big Hickory Bay south of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, east of the centerline of State Road 865 (but including the waters of the embayment on the eastern side of Black Island and the waters inshore of the mouth of Big Hickory Pass that are west of State Road 865), and north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, excluding Spring Creek and the portions of the marked channels otherwise designated under paragraph (c)(15)(xiii) of this section and the portion of Hickory Bay designated in paragraph (c)(15)(xiii) of this section.

(xiii) Watercraft may not exceed 25 miles per hour all year in:

(A) All waters of Big Hickory Bay north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, west of a line beginning at a point (approximate latitude 26°20′38″ North, approximate longitude 81°50′24″ West) on the southern shoreline of Big Hickory Bay and bearing 338° to a point (approximate latitude 26°21′39″ North, approximate longitude 81°50′48″ West) on the water in the northwestern end of Big Hickory Bay near the eastern end of Broadway Channel, south of a line beginning at said point on the water in the northwestern end of Big Hickory Bay and bearing 242° to the northernmost point (approximate latitude 26°21′39″ North, approximate longitude 81°50′50″ West) of the unnamed mangrove island south of Broadway Channel, and east of the eastern shoreline of said mangrove island and a line beginning at the southernmost point of said island (approximate latitude 26°21′07″ North, approximate longitude 81°50′58″ West) and bearing 167° to a point on Little Hickory Island (approximate latitude 26°21′03″ North, approximate longitude 81°50′57″ West);

(B) All waters of the main marked North-South channel in northern Estero Bay from Green Channel Marker 37 (approximate latitude 26°26′02″ North, approximate longitude 81°54′29″ West) to Green Channel Marker 57 (approximate latitude 26°25′08″ North, approximate longitude 81°53′29″ West);

(C) All waters of the main marked North-South channel in southern Estero Bay south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of the unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, and north and east of Red Channel Marker 62 (approximate latitude 26° 21′31″ North, approximate longitude 81° 51′20″ West) in Broadway Channel;

(D) All waters within the portion of the marked channel leading to the Gulf of Mexico through New Pass, west of the North-South channel and east of State Road 865; all waters of the marked channel leading to Mullock Creek north of a line beginning at a point (approximate latitude 26° 24′36″ North, approximate longitude 81° 52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26° 24′39″ North, approximate longitude 81° 52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and south of Red Channel Marker 18 (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West);

(E) All waters of the marked channel leading from the Mullock Creek Channel to the Estero River, west of the mouth of the Estero River. (This designation only applies if a channel is marked in accordance with permits issued by all applicable State and Federal authorities. In the absence of a properly permitted channel, this area is as designated under paragraph (c)(15)(xi) of this section);

(F) All waters of the marked channel commonly known as Alternate Route Channel, with said channel generally running between Channel Marker 1 (approximate latitude 26°24′29″ North, approximate longitude 81°51′53″ West) and Channel Marker 10 (approximate latitude 26°24′00″ North, approximate longitude 81°51′09″ West);

(G) All waters of the marked channel commonly known as Coconut Channel, with said channel generally running between Channel Marker 1 (approximate latitude 26°23′44″ North, approximate longitude 81°50′55″ West) and Channel Marker 23 (approximate latitude 26°24′00″ North, approximate longitude 81°50′30″ West);

(H) All waters of the marked channel commonly known as Southern Passage Channel, with said channel generally running between Channel Marker 1 (approximate latitude 26°22′58″ North, approximate longitude 81°51′57″ West) and Channel Marker 22 (approximate latitude 26°23′27″ North, approximate longitude 81°50′46″ West); and

(I) All waters of the marked channel leading from the Southern Passage Channel to Spring Creek, west of the mouth of Spring Creek.

(xiv) Maps of the Pine Island–Estero Bay Manatee Refuge follow:

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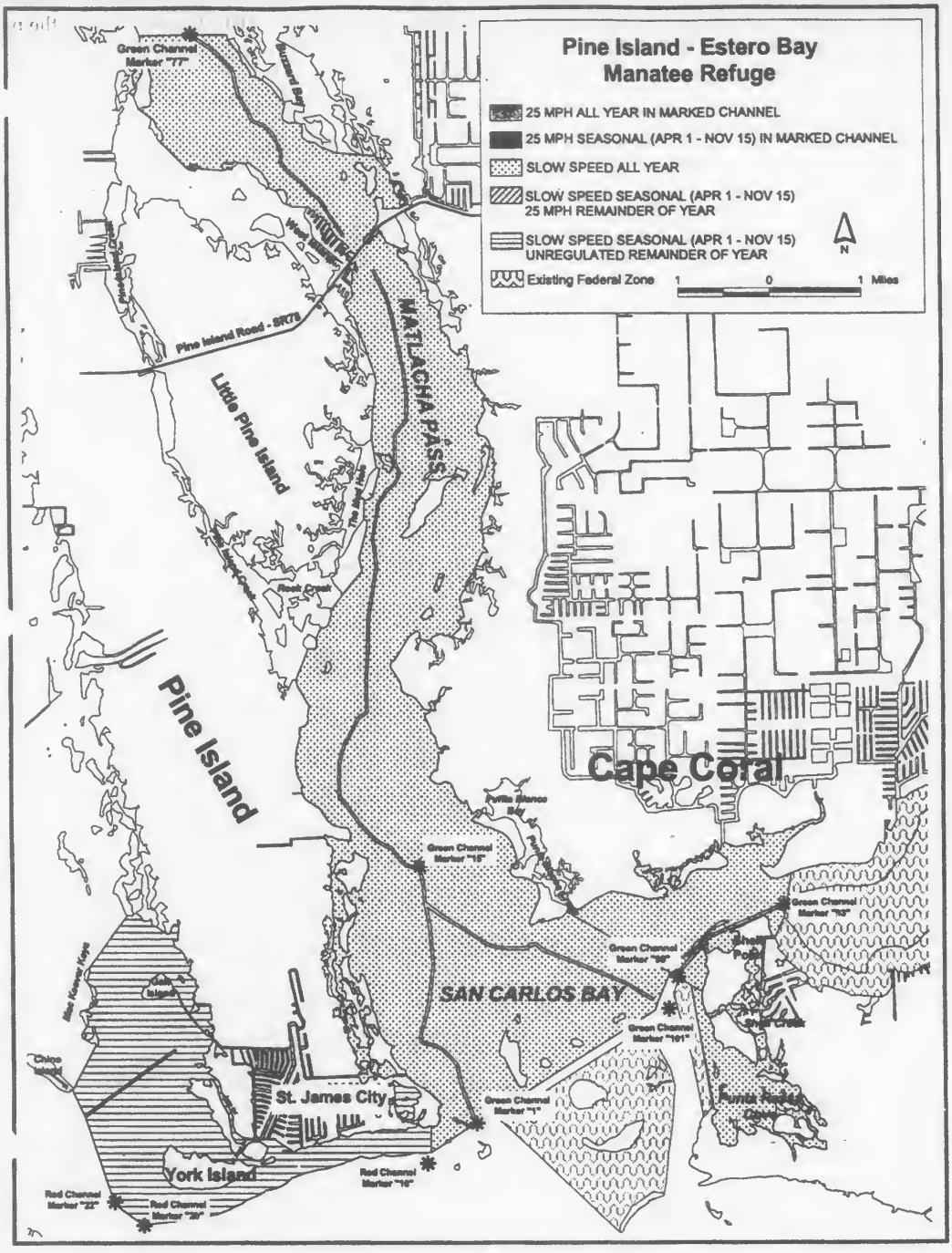
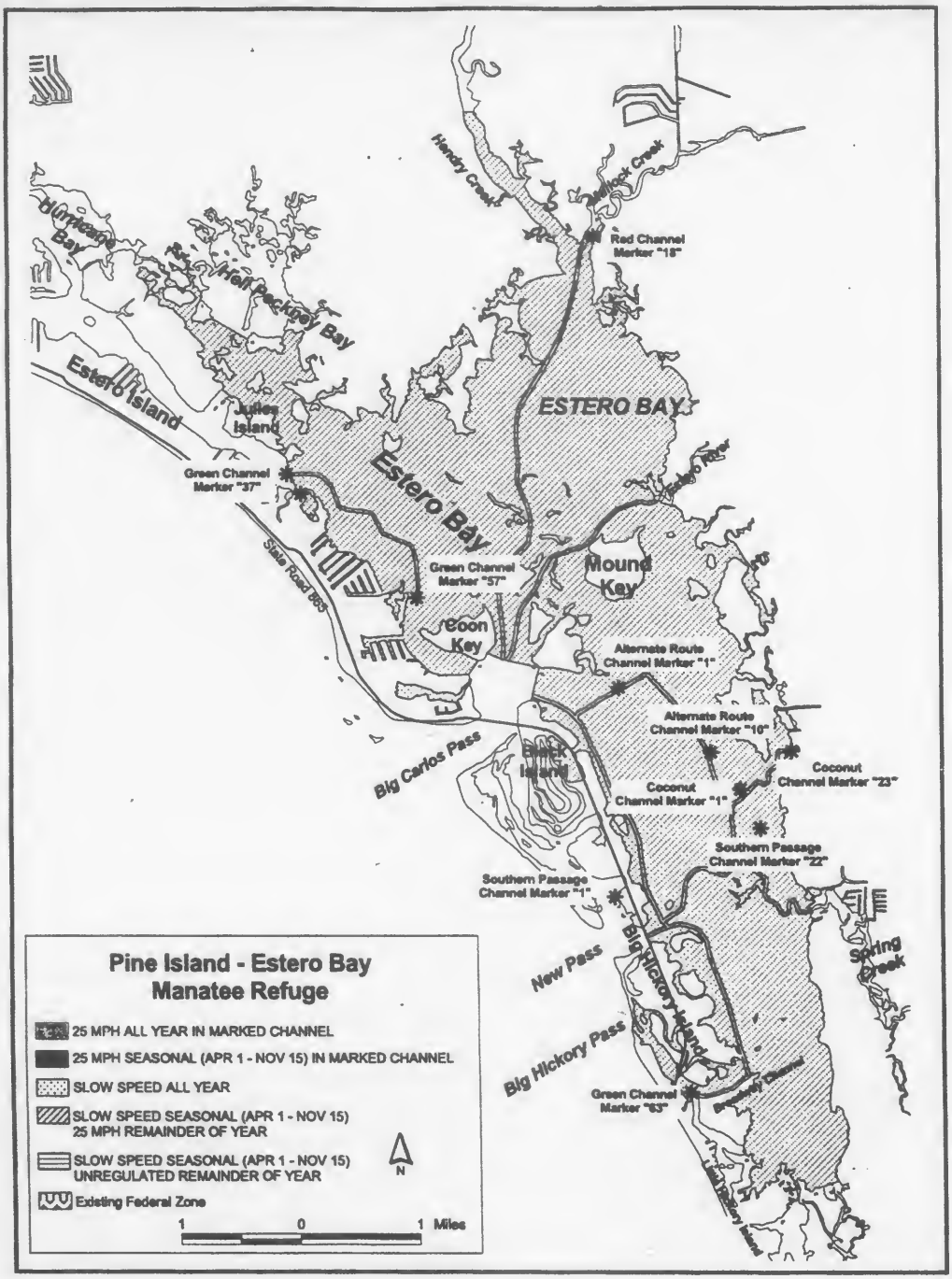

Pine Island - Estero Bay
Manatee Refuge
25 MPH ALL YEAR IN MARKED CHANNEL
25 MPH SEASONAL (APR 1 - NOV 15) IN MARKED CHANNEL
SLOW SPEED ALL YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
25 MPH REMAINDER OF YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
UNREGULATED REMAINDER OF YEAR
Existing Federal Zone
1 0 1 Miles
N
Green Channel Marker "77"
Pine Island Road - SR78
Little Pine Island
MATLACHA PASS
Pine Island
Cape Coral
Green Channel Marker "15"
Green Channel Marker "53"
Green Channel Marker "55"
SAN CARLOS BAY
Green Channel Marker "101"
Green Channel Marker "1"
St. James City
York Island
Red Channel Marker "16"
Red Channel Marker "22"
Red Channel Marker "20"



Dated: July 15, 2004.

Paul Hoffman,

For Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–17906 Filed 8–5–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT65

Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), as required by regulation, hereby provide notice of the termination of the emergency establishment of the Pine Island-Estero Bay Refuge, which was created when a rule was published in the **Federal Register** on April 7, 2004, and will expire effective August 5, 2004. We are publishing a proposed rule to establish these areas as the Pine Island-Estero Bay Manatee Refuge by standard rulemaking elsewhere in this issue of the **Federal Register**. In order to provide for continued protection of this area during the rulemaking process, while allowing adequate time for public hearings and comments on the proposed designation, we are hereby using our emergency authority to re-establish the temporary Pine Island-Estero Bay Refuge, effective August 6, 2004. The area established by this rule will be a manatee refuge and watercraft will be required to proceed at either "slow speed" or at not more than 25 miles per hour, on an annual or seasonal basis, as marked. While adjacent property owners must comply with the speed restrictions, the designation will not preclude ingress and egress to private property. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), based on our determination that there is substantial evidence of imminent danger of taking one or more manatees and the emergency designation of a manatee refuge is necessary to prevent such taking. In evaluating the need for emergency designation of this manatee protection area, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity. We anticipate making a final determination on these sites in a final rule within the 120-day effective period of this emergency designation, unless State or local governments implement measures at these sites that would, in our view, make such establishment unnecessary to prevent the taking of one or more manatees.

DATES: In accordance with 50 CFR 17.106, the effective date for this action will be August 6, 2004, which will also be the date of publication in the following newspapers: Fort Myers News-Press; Cape Coral Daily Breeze; and Naples Daily News. This emergency action will remain in effect for 120 days after publication in the **Federal Register** (until December 6, 2004).

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the South Florida ES Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960.

FOR FURTHER INFORMATION CONTACT: Jay Slack or Bert Byers (*see* **ADDRESSES** section), telephone (772) 562–3909.

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee (*Trichecus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and is further protected under the MMPA (16 U.S.C. 1361–1407). Manatees reside in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and are occasionally seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA.

Human activities, and particularly waterborne activities, can result in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined by section 3(18) of the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased as a function of residential growth and increased visitation. This increased use is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has also increased. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waters. In 2003, 743,243 vessels were registered in the State of Florida. This represents an

increase of 26 percent since 1993. The number of vessels reported here differs from that reported in our April 7, 2004, rule establishing a temporary, emergency refuge on these sites because new data have since become available from the State of Florida. The apparent decline in number of vessels registered between 2001 and 2003 is due to a change in the way registrations were counted. The earlier (2001) numbers included all registrations occurring during the year and, therefore, double-counted vessels that were sold and re-registered during the same year.

The large increase in human use of manatee habitat has had direct and indirect impacts on this endangered species. Direct impacts include injuries and deaths from watercraft collisions, deaths and injuries from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, including decreases in water quality throughout some aquatic habitats, decreases in the quantity of warm water in natural spring areas, the spread of marine debris, and general disturbance from human activities.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, taking by harassment. A manatee sanctuary, as defined in 50 CFR 17.102, is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Reasons for Emergency Determination

In deciding to implement this emergency rule, we assessed the effects of a recent State court ruling overturning critically important, State-designated manatee protection zones in Lee County. In this case, (*State of Florida Fish and Wildlife Conservation Commission (FFWCC)* v. *William D. Wilkinson, Robert W. Watson, David K. Taylor, James L. Frock (2 Cases), Jason L. Fluharty, Kenneth L. Kretsh, Harold Stevens, Richard L. Eyler, and John D. Mills*), who were issued citations for alleging different violations of Rule 68C–22.005 (Rule), challenged the Rule adopted by the FFWCC regulating the operation and speed of motorboat traffic in Lee County waters to protect manatees. In its ruling the court determined that under Florida law the FFWCC can regulate the operation and speed of motorboats in order to protect manatees from harmful collisions with motorboats, however: (1) In the area to be regulated, manatee sightings must be frequent and, based upon available scientific information, it has been determined that manatees inhabit this these areas on a regular, periodic or continuous basis; and (2) when the FFWCC adopts rules it must consider the rights of voters, fishermen and water-skiers and the restrictions adopted by the FFWCC must not unduly interfere with those rights. In this instance the court found that the Rule for four of the regulated areas did not meet the State standard for the frequency of sightings and the rule unduly interfered with the rights of voters. Thus, the designated manatee protection zones were invalidated and the citations were dismissed.

The legal basis for the action to be taken by the Service differs markedly from that in the *FFWCC* v. *Wilkinson* case. The Service's action is not based on State law but rather is based upon a Federal regulation, 50 CFR 17.106(a) which provides the standard for an emergency designation of a protected area. Specifically, this regulation provides that a manatee protection area may be established "* * * at any time [the Director] determines that there is substantial evidence that there is imminent danger of a taking of one or more manatees, and that such establishment is necessary to prevent such a taking."

We also reviewed the best available information to evaluate manatee and human interactions in these areas. Manatees are especially vulnerable to fast-moving power boats. The slower a boat is traveling, the more time a manatee has to avoid the vessel and the more time the boat operator has to detect and avoid the manatee. Nowacek *et al.* (2000) documented manatee avoidance of approaching boats. Wells *et al.* (1999) confirmed that, at a response distance of 20 meters, a manatee's time to respond to an oncoming vessel increased by at least 5 seconds if the vessel was traveling at slow speed. Therefore, the potential for take of manatees can be greatly reduced if boats are required to travel at slow speed in areas where manatees can be expected to occur.

The waterbodies encompassed in this emergency designation receive extensive manatee use either on a seasonal or year-round basis as documented in radio telemetry and aerial survey data (FWCC 2003). The areas contain feeding habitats and serve as travel corridors for manatees (FWCC 2003). They have also been regulated at either slow speed or with a 25-mile-per-hour speed limit by State government since 1999 prior to the State court ruling in *(FFWCC)* v. *William D. Wilkinson et al.* in December, 2003. Without this emergency Federal designation, watercraft can be expected to travel at high speeds in areas frequented by manatees, which would result in the take of one or more manatees. In fact, boat operators could inadvertently be encouraged to travel at high speeds. While the State court invalidated speed limits in the areas adjacent to navigation channels, it did not invalidate the 25-mile-per-hour speed limit in the navigation channels that traverse the affected area. Therefore, the speed limit in the navigation channel is now lower than that of the surrounding, shallower areas. As a result, shallow-draft high-speed boats capable of traveling outside the navigation channels can be expected to be operated at high speeds (greater than 25 miles per hour) in the areas more likely to be frequented by manatees.

There is a history of manatee mortalities in the area as a result of collisions with watercraft. At least 18 carcasses of manatees killed in collisions with watercraft have been recovered in or immediately adjacent to the designated areas since 1999 (*http://www.floridamarine.org,* 2004), with four carcasses recently recovered in close proximity to the sites following the State court action. Necropsies revealed that these animals died of wounds received from boat collisions. On August 6, 2004, we published a proposed rule to establish the Pine Island-Estero Bay Manatee Refuge as a permanent manatee protected area by

normal rulemaking procedures. However, the current emergency refuge is temporary and will expire on August 5, 2004, prior to the closing of the public review and comment period on the proposed rule. Without the emergency designation, these areas would not receive the needed protection because of the time necessary to complete the normal rulemaking process.

For these reasons, we believe that there is imminent danger of take of one or more manatees in these areas and emergency designation of a manatee refuge is necessary to prevent such taking. Manatees utilize these areas, there is a history of take at these sites, future take is imminent, protection measures are insufficient, and we do not anticipate any alternative protection measures being enacted by State or local government in sufficient time to reduce the likelihood of take occurring.

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective sooner than 30 days after publication in the **Federal Register**. As discussed under "Reasons for Emergency Determination," the emergency manatee refuge established April 7, 2004, is temporary, lasting only through August 5, 2004. Since the standard rulemaking process for creating a permanent refuge here could not be completed before expiration of the emergency refuge, re-establishment of the emergency manatee protection area must be effective August 6, 2004, in order to prevent a lapse in protection. Any further delay in making this manatee refuge effective would result in further risks of manatee mortality, injury, and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees is imminent and in fact has already occurred in or in close proximity to the site, we believe good cause exists to make this rule effective August 6, 2004. For the same reasons, we also believe that we have good cause under 5 U.S.C. 553(b)(3)(B) to issue this rule without prior notice and public procedure. We believe such emergency action is in the public interest because of the imminent threat to manatees and the time required to complete the standard rulemaking process, which would probably result in additional take of manatees. This rule does not supersede any more stringent State or local regulations.

Future Federal Actions

Once this emergency rule is in effect, the emergency designation is temporary and applies to these areas for only 120 days. We believe the danger to manatees due to watercraft collisions in the Pine Island-Estero Bay area is not only imminent, but also ongoing and year-round. Accordingly, we are proceeding with the normal rulemaking process to establish an additional manatee protection area in Lee County, Florida, in accordance with 50 CFR 17.103. As part of this process, we have published a proposed rule in the **Federal Register** on August 6, 2004. We anticipate publishing a final rule prior to December 4, 2004, when this emergency rule expires.

Definitions

"Planing" means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

"Slow speed" means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is: (1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

"Wake" means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

"Water vehicle, watercraft," and "vessel" include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

Area Designated as a Manatee Refuge by Emergency Rule

Pine Island-Estero Bay Manatee Refuge

The Pine Island-Estero Bay Manatee Refuge encompasses water bodies in Lee County including portions of Matlacha Pass and San Carlos Bay south of Green Channel Marker "77" and north of the Intracoastal Waterway, portions of Pine Island Sound in the vicinity of York and Chino Islands, portions of Punta Rassa Cove and Shell Creek in San Carlos Bay and the mouth of the Caloosahatchee River, and portions of Estero Bay and associated water bodies. These water bodies are designated, as posted, as either slow speed or with a speed limit of 25 miles per hour, on either a seasonal or annual basis. Legal descriptions and maps are provided in the "Regulation Promulgation" section of this notice.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this emergency rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the emergency rule clearly stated? (2) Does the emergency rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the emergency rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the emergency rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the emergency rule easier to understand?

Send a copy of any comments that affect how we could make this emergency rule easier to understand to: Office of Regulatory Affairs; Department of the Interior, Room 7229; 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. Based on experience with similar rulemakings in this area, this rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. It is not expected that any

significant economic impacts would result from the establishment of a manatee refuge (approximately 30 river miles) in Lee County in the State of Florida.

The purpose of this rule is to establish an emergency manatee refuge in Lee County, Florida. We are preventing the take of manatees by controlling certain human activity in this County. For the manatee refuge, the areas are year-round or seasonal slow speed, or year-round or seasonal speed limits of 25 miles per hour. Affected waterborne activities include, but are not limited to, transiting, cruising, water skiing, fishing, marine construction, and the use of all water vehicles. This rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this rule. Conversely, the rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the rule against a "baseline," which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that the Pine Island-Estero Bay area has no regulating speed limits other than the 25 miles per hour in the navigation channels. The State-designated speed zones, other than in the navigation channels, have been lifted by a State Court decision. However, residents and other water users have lived with speed restrictions in this area for many years and have established business and recreational patterns on the water to accommodate their needs and desires for water-based recreation. Even though the baseline is set at no speed zones, the actual economic effects may very well be insignificant for this 120-day emergency rule because almost all users have been previously subject to these restrictions. Thus, the rule is expected to have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the manatee refuge areas. These speed zone changes are summarized in the emergency rule.

In addition to speed zone changes, the rule no longer allows for the speed zone exemption process in place under State regulations. Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain commercial activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. Speed zone exemptions were issued to 27 permit holders in the former State zones that comprise the proposed manatee refuge area. One permit holder from previous years did not renew at the last opportunity.

In order to gauge the economic effect of this rule, both benefits and costs must be considered. Potential economic benefits related to this rule include increased manatee protection and tourism related to manatee viewing, increased number of marine construction permits issued, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities. Economic costs are measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, the rule may have some impact on commercial fishing because of the need to maintain slower speeds in some areas. The extension of slower speed zones in this rule is not expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over $100 million).

Economic Benefits

We believe that the designation of the Pine Island-Estero Bay Manatee Refuge in this rule will increase the level of manatee protection in these areas. A potential economic benefit is increased tourism resulting from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of reduced disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this rule produces some economic benefits. However, given the lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact from the designation of a manatee protection area affects boaters in these areas, in that boats are required to go slower than under current conditions. Some impacts may be felt by recreationists who have to use alternative sites for their activity or who have a reduced quality of the waterborne activity experience at the designated sites because of the rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the manatee refuges. The resulting potential economic impacts are discussed below. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use undesignated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not

known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact. Until recently, speed zones were in place in this area and recreationists have adjusted their activities to accommodate them. It is not expected that for a 120-day emergency rule there would be a significant loss in consumer surplus from this activity.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Pine Island-Estero Bay areas is currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because these boats are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact.

Affected Commercial Fishing Activities

Several commercial fisheries will experience some impact due to the regulation. To the extent that the regulation establishes additional speed zones in commercial fishing areas, this will increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in the Pine Island-Estero Bay area cannot be quantified. The designation will likely affect commercial fishermen by way of added travel time, which can result in an economic impact. Some of the 27 active permit holders with speed limit exemptions are commercial fishermen. However, because the manatee refuge designation will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel up to 25 miles per hour in the affected areas, the Service believes that it is unlikely that the rule will result in a significant economic impact on the commercial fishing industry. It is important to note that, in 2001, the total annual value of potentially affected fisheries was approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this rule.

Agency Administrative Costs

The cost of implementing the rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. Since temporary signage is still in place from the previous emergency refuge in this location, and is still appropriate, we anticipate little or no additional costs for re-establishment of a 120 manatee refuge here. The Service will likely spend additional funds for enforcement at the newly designated manatee refuge for 120 days. These costs cannot be accurately estimated at this time. The costs of enforcement may include hiring and training new law enforcement agents and special agents, and the associated training, equipment, upkeep, and clerical support (Service 2003b). Finally, there are some costs for education and outreach to inform the public about this new manatee refuge area.

While the State of Florida has 12,000 miles of rivers and 3 million acres of lakes, this rule will affect approximately 30 river miles. The speed restrictions in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. This rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this rule. The distance that recreationists may have to travel to reach an undesignated area varies. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower in some areas may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the manatee refuge is not expected to be significant (*i.e.*, an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuge is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating the Pine Island-Estero Bay area, where previously existing State designations have been eliminated, to protect the manatee population in that area.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the sites would result from this rule. No entitlements, grants, user fees, loan programs, or effects on the rights and obligations of their recipients are expected to occur.

d. This rule does not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of the manatee refuge. Currently, no information is available on the specific number of small entities that are potentially affected. However, 27 active permit holders were exempt from the speed limits in the proposed refuge area. Because these zones have been in place since 1999 and people have adjusted and there were no other permit holders, it is reasonable to expect that the emergency rule will impact only the 27 permit holders in the former State speed zones. They are primarily commercial fishing boats and fishing guides. Both would be considered small businesses. The 27 permit holders had State exemptions from the speed restrictions based on an application that stated they would suffer at least a 25 percent income loss without the permit. The usual income level for these businesses

is not known, however a 25 percent loss of business income is significant regardless of the level of business income. We acknowledge that there could be a significant loss of income to those permit holders that rely on speed to carry out their business activities, however, the Service believes that the 27 permit holders do not constitute a substantial number.

This rule will add to travel time for recreational boating and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on most small businesses resulting from this rule are likely to be indirect effects related to a reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 mph in the navigation channels, we believe that any economic effect on small commercial fishing or charter boat entities (other than the 27 permit holders) will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

The employment characteristics of Lee County are shown in Table 1 for the year 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of a manatee refuge:

- Fishing, hunting, trapping (SIC 09);
- Water transportation (SIC 44);
- Miscellaneous retail (SIC 59);
- Amusement and recreation services (SIC 79);
- Non-classifiable establishments (NCE).

TABLE 1.—EMPLOYMENT CHARACTERISTICS OF LEE COUNTY IN FLORIDA—1997 (INCLUDES SIC CODES 09, 44, 59, 79, AND NCE [a]

County	Total mid-March employment [b] (all industries)	Mid-March employment [b] (select SIC Codes)	Total establishments (all industries)	Select SIC Codes (Includes SIC Codes 09, 44, 59, 79, and NCE [a]				
				Total establishments (all industries)	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20+ employees)
Lee	135,300	7,734	11,386	974	602	193	92	87

[a] Descriptions of the SIC codes included in this table as follows: SIC 09–Fishing, hunting, and trapping; SIC 44–Water transportation; SIC 59–Miscellaneous retail service division; SIC 79—Amusement and recreation services; and NCE–non-classifiable establishments division.

[b] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.

Source: U.S. Census County Business Patterns (*http://www.census.gov/epcd/cbp/view/cbpview.html*).

As shown in Table 1, the majority (over 80 percent) of these business establishments in Lee County have fewer than ten employees, with the largest number of establishments employing fewer than four employees. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the emergency designation is for a manatee refuge, which only requires a reduction in speed, we do not believe the designation would cause significant economic effect on a substantial number of small businesses. Currently available information does not allow us to quantify the number of small business entities, such as charter boats or commercial fishing entities, that may incur direct economic impacts due to the inconvenience of added travel times resulting from the rule, but it is safe to assume that the current 27 permit holders may constitute the affected parties for a 120-day rule. The Service does not believe the 27 permit holders constitute a substantial number. Prior to establishing the Pine Island-Estero Bay as a permanent manatee refuge, public comments on our proposed rule published elsewhere in this issue of the **Federal Register** will be used for further refinement of the impact on small entities and the general public. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists that will change their behavior, and how their behavior will change, is unknown; therefore, the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas and the fact that speed zones were in place until recently, we believe that this designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the affected county. An unknown portion of the establishments shown in Table 1 could be affected by this rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to a reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 miles per hour in the navigational channels, we believe that any economic impact on most small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand

for goods and services from commercial entities is likely to be insignificant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 25-miles-per-hour navigational channels, this impact is likely to be limited. Further, only 27 active permit holders were exempt from the former State speed zones. The impact will most likely stem from only these permit holders.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists and commercial users due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries, while imposing regulations for at least a limited period, will not impose obligations on State or local governments that have not previously existed.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over publicly-owned submerged water bottoms.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain any collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). A Federal 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.

National Environmental Policy Act

We have analyzed this rule in accordance with criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An Environmental Assessment has been prepared and is available for review by written request to the Field Supervisor (*see* **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to continue their operation as they have in the past, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from the Vero Beach Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Kalani Cairns (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub.L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.108 by adding paragraph (c) (13) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(13) *The Pine Island-Estero Bay Manatee Refuge.* (i) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, south of a line that bears 90° and 270° from Matlacha Pass Green Channel Marker "77" (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West), and north of Pine Island Road (State Road No. 78), excluding:

(A) The portion of the marked channel otherwise designated in paragraph (c)(13)(iii) of this section;

(B) All waters of Buzzard Bay east and northeast of a line beginning at a point (approximate latitude 26°40′00″ North, approximate longitude 82°05′20″ West) on the southwest shoreline of an unnamed mangrove island east of Matlacha Pass Green Channel Marker "77" and bearing 219° to the northeasternmost point (approximate latitude 26°39′58″ North, approximate longitude 82°05′23″ West) of another unnamed mangrove island, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′36″ North, approximate longitude 81°05′09″ West), then bearing 115° to the westernmost point (approximate latitude 26°39′34″ North, approximate longitude 82°05′05″ West) of the unnamed mangrove island to the southeast, then running along the western shoreline of said island to its southwesternmost point (approximate latitude 26°39′22″ North, approximate longitude 82°04′53″ West), then bearing 123° to the northwesternmost point (approximate latitude 26°39′21″ North, approximate longitude 82°04′52″ West) of an unnamed mangrove island, then running along the western shoreline of said island to its southeasternmost point (approximate latitude 26°39′09″ North, approximate longitude 82°04′44″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°39′08″ North, approximate longitude 82°04′41″ West) of a peninsula on the unnamed mangrove island to the southeast, then running along the southwestern shoreline of said island to its southeasternmost point (approximate latitude 26°38′51″ North, approximate longitude 82°04′18″ West), then bearing 99° to the southernmost point (approximate latitude 26°38′50″ North, approximate longitude 82°04′03″ West) of the unnamed mangrove island to the east, then bearing 90° to the line's terminus at a point (approximate latitude 26°38′50″ North, approximate longitude 82°03′55″ West) on the eastern shoreline of Matlacha Pass; and

(C) All waters of Pine Island Creek and Matlacha Pass north of Pine Island Road (State Road No. 78) and west and southwest of a line beginning at a point (approximate latitude 26°39′29″ North, approximate longitude 82°06′29″ West) on the western shoreline of Matlacha Pass and bearing 160° to the westernmost point (approximate latitude 26°39′25″ North, approximate longitude 82°06′28″ West) of an unnamed island, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°39′18″ North, approximate longitude 82°06′24″ West), then bearing 128° to the northernmost point (approximate latitude 26°39′12″ North, approximate longitude 82°06′17″ West) of an unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′00″ North, approximate longitude 82°06′09″ West), then bearing 138° to a point (approximate latitude 26°38′45″ North, approximate longitude 82°05′53″ West) on the northern shoreline of Bear Key, then running along the northern shoreline of Bear Key to its easternmost point (approximate latitude 26°38′44″ North, approximate longitude 82°05′46″ West), then bearing 85° to the westernmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′32″ West) of Deer Key, then running along the northern shoreline of Deer Key to its easternmost point (approximate latitude 26°38′46″ North, approximate longitude 82°05′22″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′17″ West) of the unnamed mangrove island to the east, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°05′04″ West), then bearing 106° to the westernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°04′57″ West) of the unnamed island to the southeast, then running along the northern and eastern shorelines of said island to a point (approximate latitude 26°38′23″ North, approximate longitude 82°04′51″ West) on its eastern shoreline, then bearing 113° to the northernmost point of West Island (approximate latitude 26°38′21″ North, approximate longitude 82°04′37″ West), then running along the western shoreline of West Island to the point where the line intersects Pine Island Road (State Road No. 78).

(ii) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, St. James Creek, and San Carlos Bay, south of Pine Island Road (State Road No. 78), north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway, west of a line that bears 302° from Intracoastal Waterway Green Channel Marker "99" (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), and east of a line that bears 360° from Intracoastal Waterway Red Channel Marker "10" (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), excluding:

(A) The portions of the marked channels otherwise designated in paragraphs (c)(13)(iv) and (v) of this section;

(B) All waters of Matlacha Pass south of Pine Island Road (State Road No. 78) and west of the western shoreline of West Island and a line beginning at the southernmost point (approximate latitude 26°37′25″ North, approximate longitude 82°04′17″ West) of West Island and bearing 149° to the northernmost point (approximate latitude 26°37′18″ North, approximate longitude 82°04′12″ West) of the unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southernmost point (approximate latitude 26°36′55″ North, approximate longitude 82°04′02″ West), then bearing 163° to the line's terminus at a point (approximate latitude 26°36′44″ North, approximate longitude 82°03′58″ West) on the eastern shoreline of Little Pine Island;

(C) All waters of Matlacha Pass, Pontoon Bay, and associated embayments south of Pine Island Road (State Road No. 78) and east of a line beginning at a point (approximate latitude 26°38′12″ North, approximate longitude 82°03′46″ West) on the northwestern shoreline of the embayment on the east side of Matlacha Pass, immediately south of Pine Island Road and then running along the eastern shoreline of the unnamed island to the south to its southeasternmost point (approximate latitude 26°37′30″ North, approximate longitude 82°03′22″ West), then bearing 163° to the northwesternmost point of the unnamed island to the south, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°37′15″ North, approximate longitude 82°03′15″ West), then bearing 186(to the line's terminus at a point (approximate latitude 26°37′10″ North, approximate longitude 82°03′16″ West) on the eastern shoreline of Matlacha Pass;

(D) All waters of Pine Island Creek south of Pine Island Road (State Road No. 78); and all waters of Matlacha Pass, Rock Creek, and the Mud Hole, west of a line beginning at a point (approximate latitude 26°33′52″ North, approximate longitude 82°04′53″ West) on the western shoreline of Matlacha Pass and bearing 22° to a point (approximate latitude 26°34′09″ North, approximate longitude 82°04′45″ West) on the southern shoreline of the unnamed island to the northeast, then running along the southern and eastern shorelines of said island to a point

(approximate latitude 26°34′15″ North, approximate longitude 82°04′39″ West) on its northeastern shoreline, then bearing 24° to a point (approximate latitude 26°34′21″ North, approximate longitude 82°04′36″ West) on the southern shoreline of the large unnamed island to the north, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34′31″ North, approximate longitude 82°04′29″ West) on its eastern shoreline, then bearing 41° to the southernmost point (approximate latitude 26°34′39″ North, approximate longitude 82°04′22″ West) of another unnamed island to the northeast, then running along the eastern shoreline of said island to its northwesternmost point (approximate latitude 26°35′22″ North, approximate longitude 82°04′07″ West), then bearing 2° to the southernmost point (approximate latitude 26°35′32″ North, approximate longitude 82°04′07″ West) of the unnamed island to the north, then running along the eastern shoreline of said island to its northernmost point (approximate latitude 26°35′51″ North, approximate longitude 82°03′59″ West), then bearing 353° to the line's terminus at a point (approximate latitude 26°36′08″ North, approximate longitude 82°04′01″ West) on the eastern shoreline of Little Pine Island; and

(E) All waters of Punta Blanca Bay and Punta Blanca Creek, east of the eastern shoreline of Matlacha Pass and east and north of the eastern and northern shorelines of San Carlos Bay.

(iii) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of Green Channel Marker "77" (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West) and north of a line perpendicular to the channel at a point in the channel ¼ mile northwest of the Pine Island Road Bridge (State Road No. 78).

(iv) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of a line perpendicular to the channel at a point in the channel ¼ mile southeast of the Pine Island Road Bridge (State Road No. 78), and north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway (just north of Green Channel Marker "1").

(v) Watercraft may not exceed 25 miles per hour, all year, in all waters within the marked channel in Matlacha Pass that intersects the main Matlacha Pass channel near Green Channel Marker "15" (approximate latitude 26°31′57″ North, approximate longitude 82°03′38″ West) and intersects the main marked channel of the Intracoastal Waterway near Green Channel Marker "101" (approximate latitude 26°30′39″ North, approximate longitude 82°01′00″ West).

(vi) Watercraft are required to proceed at slow speed from April 1 through November 15 in all canals and boat basins of St. James City and the waters known as Long Cut and Short Cut; and all waters of Pine Island Sound and San Carlos Bay south of a line beginning at the southernmost tip (approximate latitude 26°31′28″ North, approximate longitude 82°06′19″ West) of a mangrove peninsula on the western shore of Pine Island approximately 2,200 feet north of Galt Island and bearing 309° to the southeasternmost point (approximate latitude 26°31′32″ North, approximate longitude 82°06′25″ West) of another mangrove peninsula, then running along the southern shoreline of said peninsula to its southwesternmost point (approximate latitude 26°31′40″ North, approximate longitude 82°06′38″ West), then bearing 248° to a point (approximate latitude 26°31′40″ North, approximate longitude 82°06′39″ West) on the eastern shoreline of an unnamed mangrove island, then running along the southern shoreline of said island to its southwesternmost point (approximate latitude 26°31′39″ North, approximate longitude 82°06′44″ West), then bearing 206° to the line's terminus at the northernmost point of the MacKeever Keys (approximate latitude 26°31′09″ North, approximate longitude 82°07′09″ West), east of a line beginning at said northernmost point of the MacKeever Keys and running along and between the general contour of the western shorelines of said keys to a point (approximate latitude 26°30′27″ North, approximate longitude 82°07′08″ West) on the southernmost of the MacKeever Keys, then bearing 201° to a point (approximate latitude 26°30′01″ North, approximate longitude 82°07′19″ West) approximately 150 feet due east of the southeasternmost point of Chino Island, then bearing approximately 162° to Red Intracoastal Waterway Channel Marker "22" (approximate latitude 26°28′57″ North, approximate longitude 82°06′55″ West), then bearing approximately 117° to the line's terminus at Red Intracoastal Waterway Channel Marker "20" (approximate latitude 26°28′45″ North, approximate longitude 82°06′38″ West), north of a line beginning at said Red Intracoastal Waterway Channel Marker "20" and bearing 86° to a point (approximate latitude 26°28′50″ North, approximate longitude 82°05′48″ West) ¼ mile south of York Island, then running parallel to and ¼ mile south of the general contour of the southern shorelines of York Island and Pine Island to the line's terminus at a point on a line bearing 360° from Red Intracoastal Waterway Channel Marker "10" (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), and west and southwest of the general contour of the western and southern shorelines of Pine Island and a line that bears 360° from said Red Intracoastal Waterway Channel Marker "10," excluding the portion of the marked channel otherwise designated in paragraph (c)(13)(vii) of this section.

(vii) Watercraft may not exceed 25 miles per hour from April 1 through November 15 in all waters of the marked channel that runs north of the power lines from the Cherry Estates area of St. James City into Pine Island Sound, east of the western boundary of the zone designated in paragraph (c)(13)(vi) of this section, and west of a line perpendicular to the power lines that begins at the easternmost point (approximate latitude 26°30′25″ North, approximate longitude 82°06′15″ West) of the mangrove island on the north side of the power lines approximately 1,800 feet southwest of the Galt Island Causeway.

(viii) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and Punta Rassa Cove east of a line that bears 352° from the northernmost tip of the northern peninsula on Punta Rassa (approximate latitude 26°29′44″ North, approximate longitude 82°00′33″ West), and south of a line that bears 122° from Intracoastal Waterway Green Channel Marker "99" (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), including all waters of Shell Creek and associated waterways.

(ix) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and the Caloosahatchee River, including the residential canals of Cape Coral, northeast of a line that bears 302° and 122° from Intracoastal Waterway Green Channel Marker "99" (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), west of a line that bears 346° from Intracoastal Waterway Green Channel Marker "93" (approximate latitude 26°31′37″ North, approximate longitude 81°59′46″ West), and north and northwest of the general contour of the northwestern shoreline of Shell Point and a line that bears approximately 74° from the northernmost tip (approximate latitude 26°31′31″ North, approximate longitude 81°59′57″ West) of Shell Point to said Intracoastal Waterway Green

Channel Marker "93," excluding the Intracoastal Waterway between markers "93" and "99" (which is already designated as a Federal manatee protection area, requiring watercraft to proceed at slow speed, and is not impacted by this rulemaking).

(x) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hell Peckney Bay southeast of Hurricane Bay, northeast of the northern shorelines of Julies Island and the unnamed island immediately northwest of Julies Island and a line that bears 312° from the northwesternmost point of Julies Island (approximate latitude 26°26′37″ North, approximate longitude 81°54′57″ West), northwest of Estero Bay, and southwest of a line beginning at the southernmost point (approximate latitude 26°27′23″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove peninsula in northwest Hell Peckney Bay and bearing 191° to the northernmost point (approximate latitude 26°27′19″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove island, then running along the northern shoreline of said island to its southeasternmost point (approximate latitude 26°27′11″ North, approximate longitude 81°55′05″ West), then bearing 115° to a point (approximate latitude 26°27′03″ North, approximate longitude 81°54′47″ West) on the northwest shoreline of an unnamed mangrove island, then running along the northern shoreline of said island to its northeasternmost point (approximate latitude 26°27′02″ North, approximate longitude 81°54′33″ West), and then bearing 37° to the line's terminus at the westernmost point of an unnamed mangrove peninsula in eastern Hell Peckney Bay.

(xi) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hendry Creek south of a line that bears 270° from a point (approximate latitude 26°28′40″ North, approximate longitude 81°52′56″ West) on the eastern shoreline of Hendry Creek; and all waters of Estero Bay southeast and east of Hell Peckney Bay, a line that bears 340° from a point (approximate latitude 26°25′56″ North, approximate longitude 81°54′25″ West) on the northern tip of an unnamed mangrove peninsula on the northeastern shoreline of Estero Island, and the northern shoreline of Estero Island, south of Hendry Creek and a line that bears 135° and 315° from Red Channel Marker "18" (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West) in Mullock Creek, and north of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, including the waters of Buccaneer Lagoon at the southern end of Estero Island, but excluding:

(A) The portions of the marked channels otherwise designated in paragraph (c)(13)(xiii) of this section;

(B) The Estero River; and

(C) To waters of Big Carlos Pass east of a line beginning at a point (approximate latitude 26°24′34″ North, approximate longitude 81°53′05″ West) on the eastern shoreline of Estero Island and bearing 36° to a point (approximate latitude 26°24′40″ North, approximate longitude 81°53′00″ West) on the southern shoreline of Coon Key, south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and west of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of said unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island.

(xii) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Estero Bay and Big Hickory Bay south of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, east of the centerline of State Road No. 865 (including the waters of the embayment on the eastern side of Black Island and the waters inshore of the mouth of Big Hickory Pass that are west of State Road No. 865), and north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, excluding Spring Creek and the portions of the marked channels otherwise designated under paragraph (c)(13)(xiii) of this section and the portion of Hickory Bay designated in paragraph (c)(13)(xiii) of this section.

(xiii) Watercraft may not exceed 25 miles per hour all year in:

(A) All waters of Big Hickory Bay north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, west of a line beginning at a point (approximate latitude 26°20′48″ North, approximate longitude 81°50′24″ West) on the southern shoreline of Big Hickory Bay and bearing 338° to a point (approximate latitude 26°21′39″ North, approximate longitude 81°50′48″ West) on the water in the northwestern end of Big Hickory Bay near the eastern end of Broadway Channel, south of a line beginning at said point on the water in the northwestern end of Big Hickory Bay and bearing 242° to the northernmost point (approximate latitude 26°21′39″ North, approximate longitude 81°50′50″ West) of the unnamed mangrove island south of Broadway Channel, and east of the eastern shoreline of said mangrove island and a line beginning at the southernmost point of said island (approximate latitude 26°21′07″ North, approximate longitude 81°50′58″ West) and bearing 167° to a point on Little Hickory Island (approximate latitude 26°21′03″ North, approximate longitude 81°50′57″ West);

(B) All waters of the main marked North-South channel in northern Estero Bay from Green Channel Marker "37" (approximate latitude 26°26′02″ North, approximate longitude 81°54′29″ West) to Green Channel Marker "57" (approximate latitude 26°25′08″ North, approximate longitude 81°53′29″ West);

(C) All waters of the main marked North-South channel in southern Estero Bay south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of the unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, and north and east of Red Channel Marker "62" (approximate latitude 26°21′31″ North, approximate longitude 81°51′20″ West) in Broadway Channel;

(D) All waters within the portion of the marked channel leading to the Gulf of Mexico through New Pass, west of the North-South channel and east of State Road No. 865; all waters of the marked channel leading to Mullock Creek north of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West)

on the southwestern shoreline of the unnamed mangrove island north of Black Island, and south of Red Channel Marker ''18'' (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West);

(E) All waters of the marked channel leading from the Mullock Creek Channel to the Estero River, west of the mouth of the Estero River. (This designation only applies if a channel is marked in accordance with permits issued by all applicable State and Federal authorities. In the absence of a properly permitted channel, this area is as designated under paragraph (c)(13)(xi) of this section.);

(F) All waters of the marked channel commonly known as Alternate Route Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°24′29″ North, approximate longitude 81°51′53″ West) and Channel Marker ''10'' (approximate latitude 26°24′00″ North, approximate longitude 81°51′09″ West);

(G) All waters of the marked channel commonly known as Coconut Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°23′44″ North, approximate longitude 81°50′55″ West) and Channel Marker ''23'' (approximate latitude 26°24′00″ North, approximate longitude 81°50′30″ West);

(H) All waters of the marked channel commonly known as Southern Passage Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°22′58″ North, approximate longitude 81°51′57″ West) and Channel Marker ''22'' (approximate latitude 26°23′27″ North, approximate longitude 81°50′46″ West); and

(I) All waters of the marked channel leading from the Southern Passage Channel to Spring Creek, west of the mouth of Spring Creek.

(xiv) Maps of the Pine Island-Estero Bay Manatee Refuge follow:

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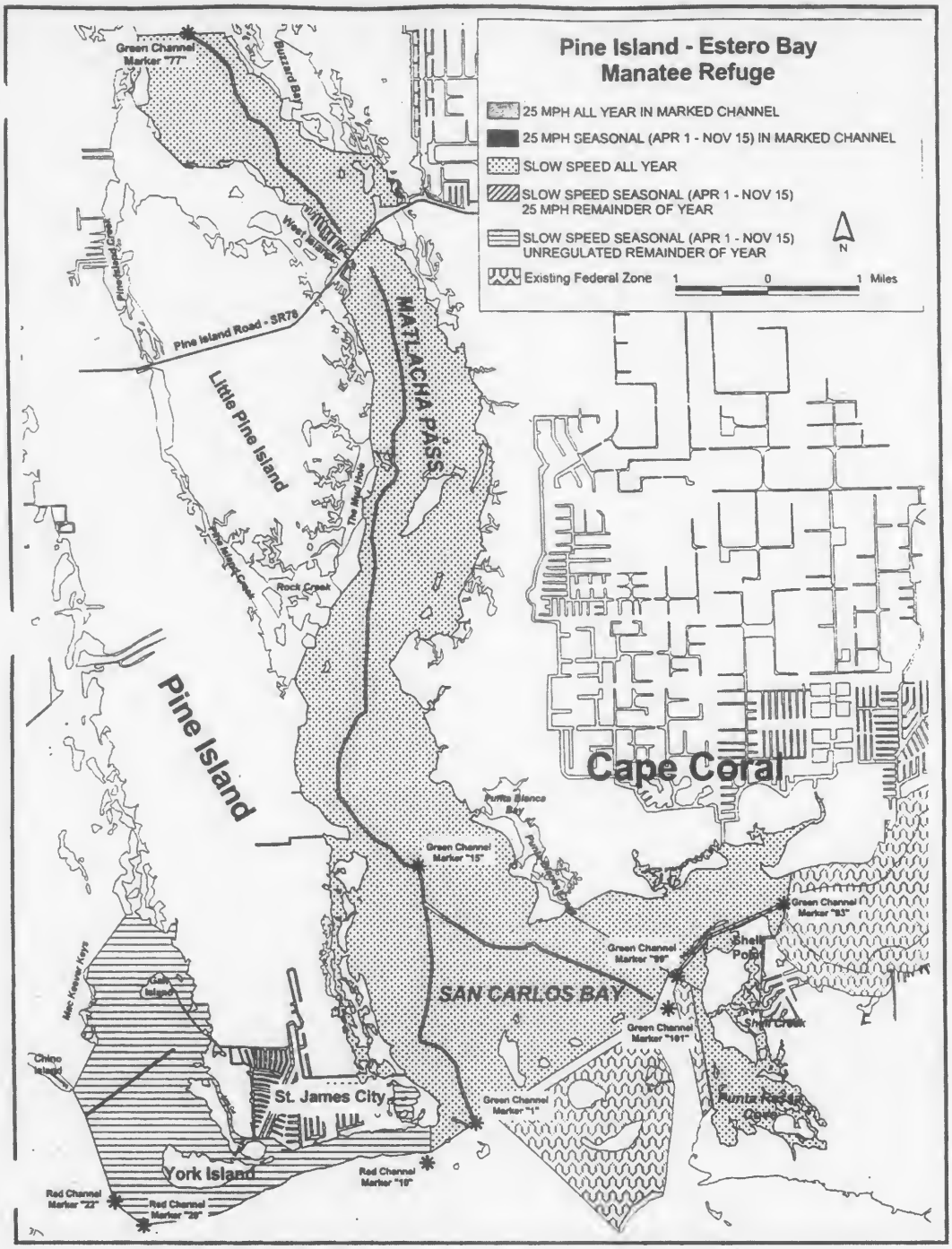
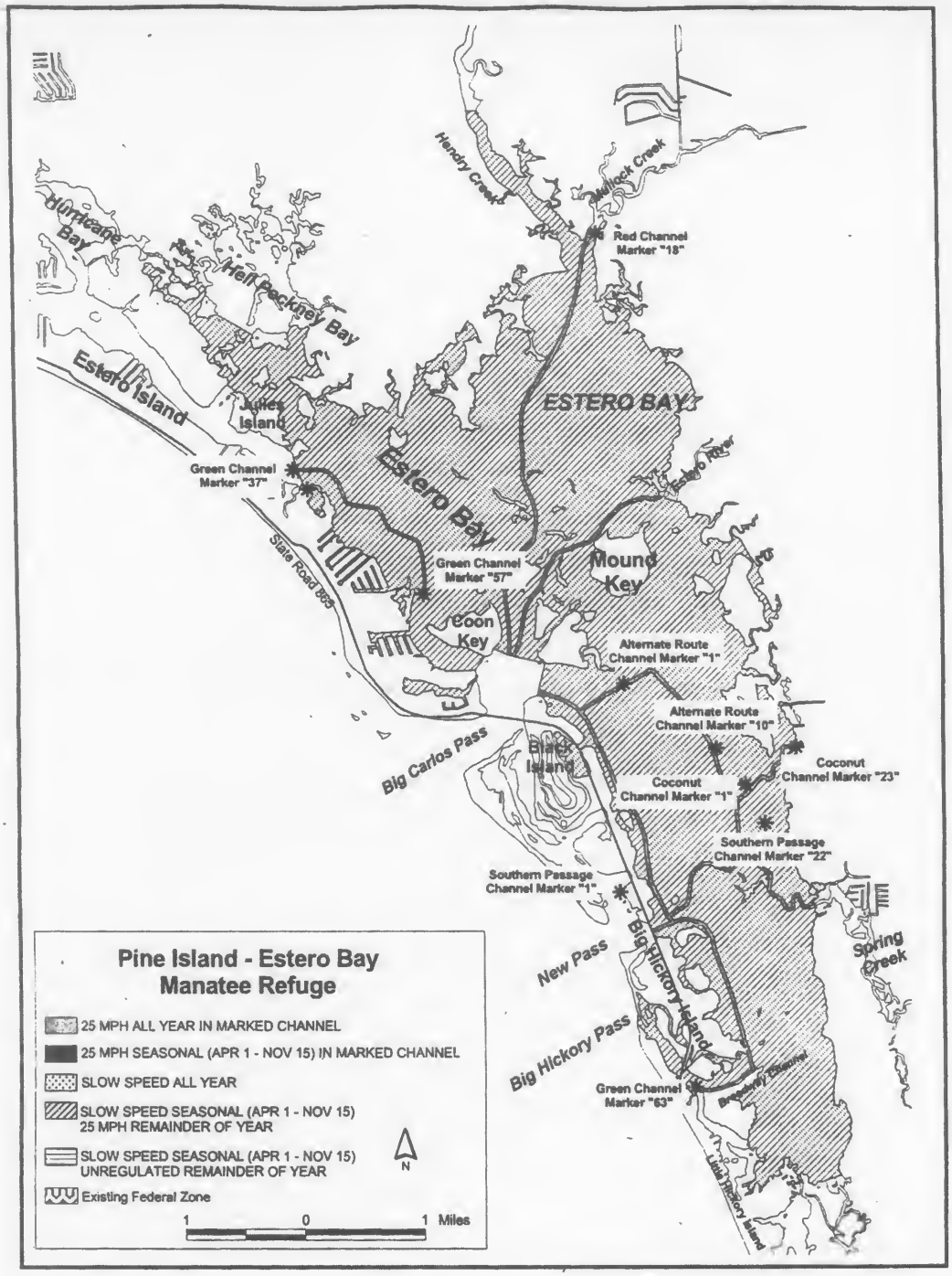

Pine Island - Estero Bay
Manatee Refuge
25 MPH ALL YEAR IN MARKED CHANNEL
25 MPH SEASONAL (APR 1 - NOV 15) IN MARKED CHANNEL
SLOW SPEED ALL YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
25 MPH REMAINDER OF YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
UNREGULATED REMAINDER OF YEAR
Existing Federal Zone
1 0 1 Miles
N
Green Channel Marker "77"
Buzzard Bay
West Pine Island
Pine Island Road - SR78
MATLACHA PASS
Little Pine Island
The Mud Hole
Rock Creek
Pine Island
Cape Coral
Punta Blanca Bay
Green Channel Marker "15"
Green Channel Marker "83"
Green Channel Marker "89"
Shell Point
SAN CARLOS BAY
Green Channel Marker "101"
Shell Creek
Mac Keever Keys
Gale Island
Chino Island
St. James City
Green Channel Marker "1"
Punta Rassa Cove
York Island
Red Channel Marker "18"
Red Channel Marker "22"
Red Channel Marker "20"



Dated: August 2, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–17970 Filed 8–3–04; 4:22 pm]

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H.R. 4363/P.L. 108–285

Helping Hands for Homeownership Act of 2004 (Aug. 2, 2004; 118 Stat. 917)

H.R. 4759/P.L. 108–286

United States-Australia Free Trade Agreement Implementation Act (Aug. 3, 2004; 118 Stat. 919)

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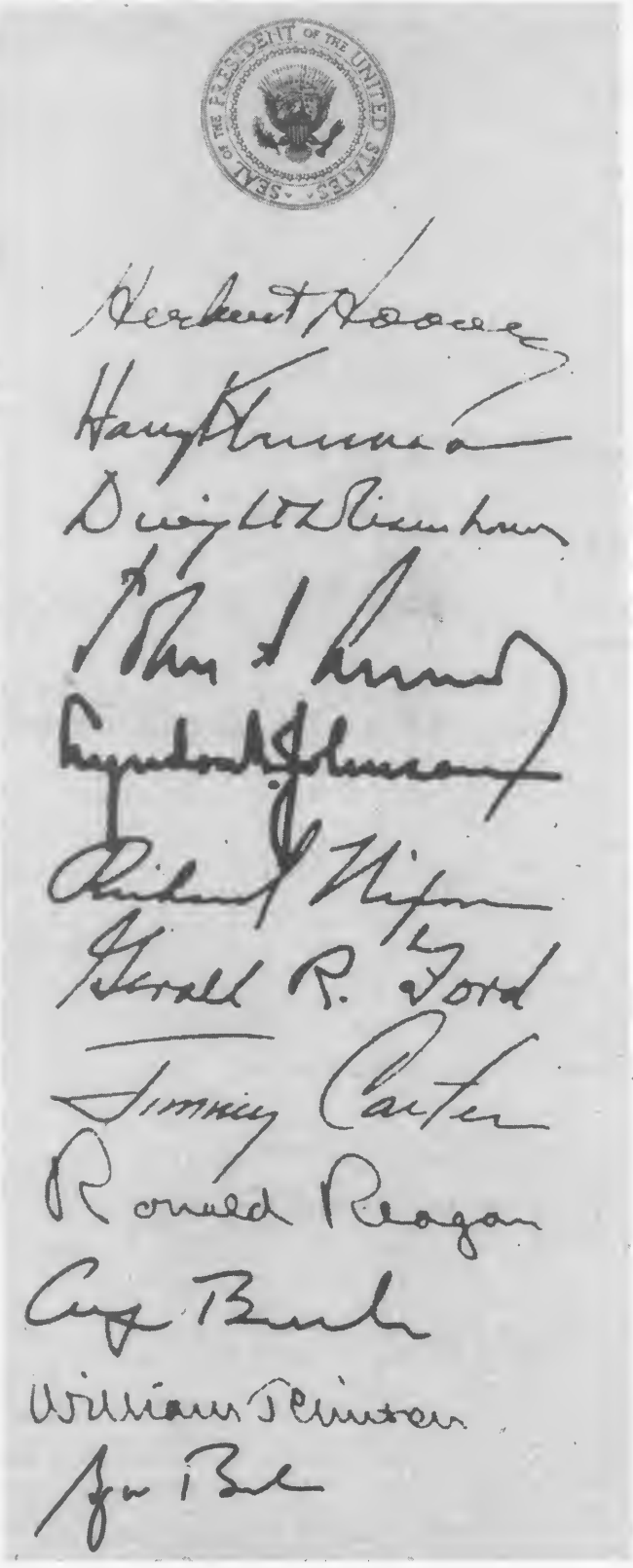

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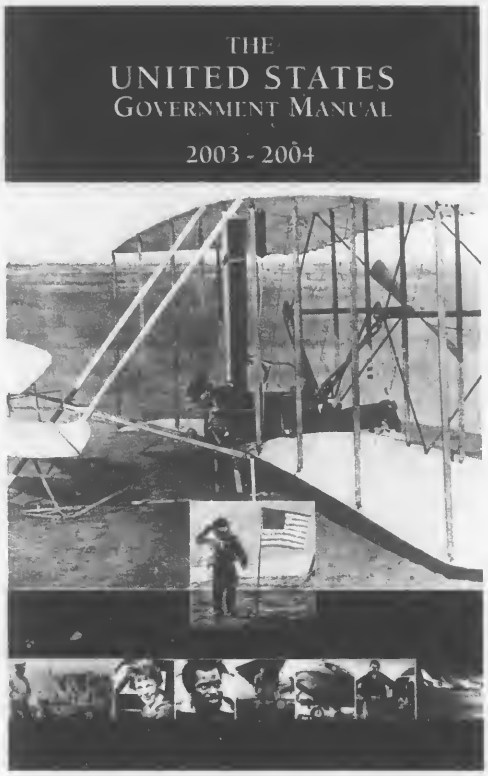

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