



# Federal Register

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**Wednesday**

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**Pages 67901-68328**



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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Wednesday, November 30, 2005  
9:00 a.m.–Noon

**WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



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Federal Register

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Wednesday, November 9, 2005

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

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 611, 612, 614, 615, and 620

RIN 3052-AC21

**Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Preferred Stock; Effective Date**

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 611, 612, 614, 615, and 620 on September 13, 2005 (70 FR 53901). This final rule amends our regulations governing preferred stock issued by Farm Credit System (FCS or System) banks, associations, and service corporations. This final rule requires greater board involvement and oversight in the retirement of preferred stock, enhances FCA's current standards of conduct regulations to specifically address insider preferred stock transactions, modifies and streamlines the FCA review and clearance process, and requires disclosure of senior officer and director preferred stock transactions. Lastly, we add a new provision to require FCA prior approval of investments by FCS banks, associations, and service corporations in preferred stock of other System institutions, including the Federal Agricultural Mortgage Corporation. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulation is November 3, 2005.

**EFFECTIVE DATE:** The regulation amending 12 CFR parts 611, 612, 614, 615, and 620 published on September 13, 2005 (70 FR 53901) is effective November 3, 2005, except for the amendments to §§ 612.2165(b)(12)–(15), 615.5245(a), and 615.5270(d). An announcement of an effective date for these sections will be published at a later date.

#### FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**Authority:** 12 U.S.C. 2252(a)(9) and (10).

Dated: November 3, 2005.

Jeanette C. Brinkley,  
Secretary, Farm Credit Administration Board.  
[FR Doc. 05-22276 Filed 11-8-05; 8:45 am]  
**BILLING CODE 6705-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2005-22712; Directorate Identifier 2005-NE-24-AD; Amendment 39-14367; AD 2005-23-09]**

RIN 2120-AA64

**Airworthiness Directives; General Electric Company (GE) CF6-80E1A1, -80E1A2, -80E1A3, -80E1A4, and -80E1A4/B Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6-80E1A1, -80E1A2, -80E1A3, -80E1A4, and -80E1A4/B turbofan engines. This AD requires initial and repetitive fluorescent-penetrant inspections (FPI) of certain areas of high pressure compressor (HPC) cases, part number (P/N) 1509M97G07 and P/N 2083M69G03. This AD results from the discovery that HPC cases, P/N

1509M97G07 and P/N 2083M69G03, were inadvertently left out of the Airworthiness Limitations Section (ALS), Chapter 05-21-02, of GE Engine Manual, GEK 99376, Revision 17. We are issuing this AD to prevent failure of the HPC case aft mount flange, due to cracking.

**DATES:** This AD becomes effective November 25, 2005.

We must receive any comments on this AD by January 9, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this 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.

#### FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7176, fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** In 2003, GE introduced a new stage 5 variable stator vane system, through Service Bulletin (SB) No. CF6-80E1 72-0237, dated January 21, 2003. To accommodate this system, GE SB No. CF6-80E1 72-0240, dated January 17, 2003, required reworking HPC case, P/N 1509M97G05, to P/N 2083M69G03. All HPC cases are supposed to have cyclic limits and inspection intervals specified in the ALS, Chapter 05-21-02, of GE Engine Manual, GEK 99376, Revision 17. GE inadvertently left HPC cases P/N 1509M97G07 and P/N 2083M69G03 out of that GE Engine Manual ALS. GE's and FAA's intent is that all HPC cases must be inspected for cracking at the first hole in the aft flange above and below each horizontal split line flange. Currently, inspections of HPC cases P/N 1509M97G07 and P/N



2083M69G03 are not mandated. However, GE informed us that HPC case, P/N 2083M69G03, is now included in the ALS, Chapter 05–21–02, of GE Engine Manual, GEK 99376, Revision 19, dated August 15, 2005, and, HPC case, P/N 1509M97G07, will be included in that Manual Chapter in Revision 20, to be issued in February 2006. This condition, if not corrected, could result in failure of the HPC case aft flange, due to cracking.

#### FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other GE CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B turbofan engines of the same type design. We are issuing this AD to prevent failure of the HPC case aft flange, due to cracking. For HPC cases, P/N 1509M97G07 and P/N 2083M69G03, this AD requires:

- Initial FPI of circumferential flange spotfaces at the first hole in the aft flange above and below each horizontal split line flange, at or before reaching 7,300 cycles-since-new; and
- Repetitive FPI of circumferential flange spotfaces at the first hole in the aft flange above and below each horizontal split line flange, within 3,700 cycles-since-last-inspection.

#### FAA's Determination of the Effective Date

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

#### 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 send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA–2005–22712; Directorate Identifier 2005–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](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 Docket Management System (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>.

#### Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility (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.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We 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, 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:

**2005–23–09 General Electric Company:**  
Amendment 39–14367. Docket No. FAA–2005–22712; Directorate Identifier 2005–NE–24–AD.

#### Effective Date

- (a) This airworthiness directive (AD) becomes effective November 25, 2005.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to General Electric Company (GE) CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A330 series airplanes.

#### Unsafe Condition

- (d) This AD results from the discovery that high pressure compressor (HPC) cases, part number (P/N) 1509M97G07 and P/N 2083M69G03, were inadvertently left out of the Airworthiness Limitations Section (ALS), Chapter 05–21–02, of GE Engine Manual GEK 99376, Revision 17. We are issuing this AD to prevent failure of the HPC case aft flange, due to cracking.

**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.

**Initial Inspection**

(f) For HPC cases, P/N 1509M97G07 and P/N 2083M69G03, perform an initial fluorescent-penetrant inspection (FPI) of circumferential flange spotfaces at the first hole in the aft flange above and below each

horizontal split line flange, at or before reaching 7,300 cycles-since-new. See Figure 1 of this AD for reference. Information on inspecting these areas can be found in the ALS of GE Engine Manual GEK 99376, Revision 19, dated August 15, 2005.

**BILLING CODE 4910-13-P**

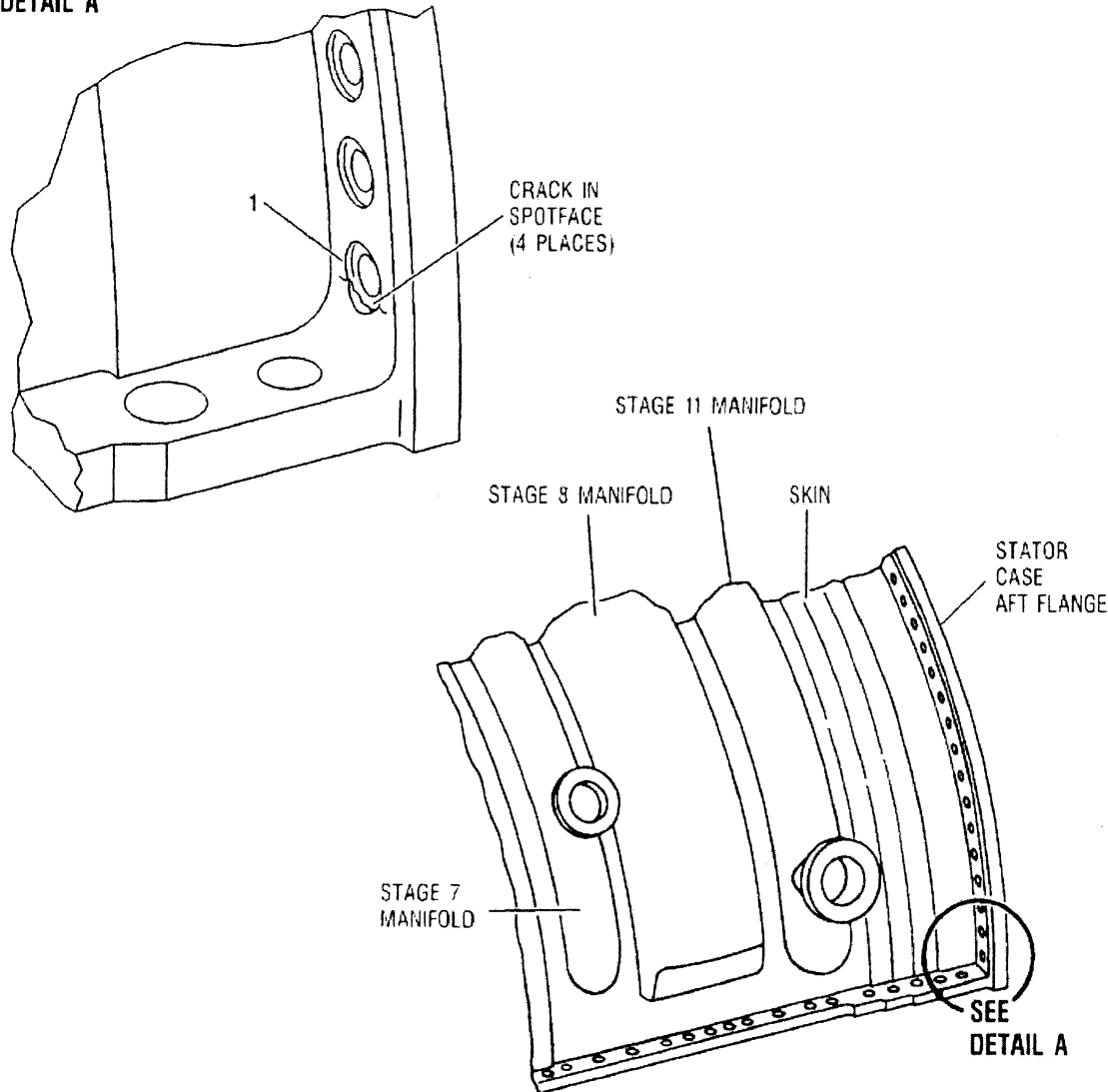
**DETAIL A**

Figure 1.

**BILLING CODE 4910-13-C**

**Repetitive Inspections**

(g) Perform repetitive FPI of circumferential flange spotfaces at the first hole in the aft flange above and below each horizontal split line flange, within 3,700 cycles-since-last-inspection. See Figure 1 of this AD for reference. Information on inspecting these areas can be found in the

ALS of GE Engine Manual GEK 99376, Revision 19, dated August 15, 2005.

**Alternative Methods of Compliance**

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(i) None.

Issued in Burlington, Massachusetts, on November 1, 2005.

**Peter A. White,**

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

[FR Doc. 05-22207 Filed 11-8-05; 8:45 am]

**BILLING CODE 4910-13-P**

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

[Docket No. FAA-2005-21719; Directorate Identifier 2005-NE-19-AD; Amendment 39-14369; AD 2005-23-11]

RIN 2120-AA64

**Airworthiness Directives; Hamilton Sundstrand Power Systems (Formerly Sundstrand Power Systems) Auxiliary Power Units Models T-62T-46C2, T-62T-46C2A, T-62T-46C3, T-62T-46C7, and T-62T-46C7A**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems) auxiliary power units (APUs) models T-62T-46C2, T-62T-46C2A, T-62T-46C3, T-62T-46C7, and T-62T-46C7A, with compressor impeller assembly, part number (P/N) 4502020 or 4502020A, installed. This AD requires removal from service of those compressor impeller assemblies at reduced service life limits. This AD results from two reports of uncontained failures of compressor impeller assemblies. We are issuing this AD to prevent an uncontained APU failure and damage to the airplane.

**DATES:** This AD becomes effective December 14, 2005.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; telephone (562) 627-5251, fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a new AD, applicable to Hamilton Sundstrand Power Systems APUs models T-62T-46C2, T-62T-46C2A, T-62T-46C3, T-62T-46C7, and T-62T-46C7A, with compressor impeller assembly, part number (P/N) 4502020 or 4502020A, installed. We published the proposed AD in the **Federal Register** on July 5, 2005 (70 FR 38625). We proposed to require removal from service of those compressor impeller assemblies at reduced service life limits.

**Examining the AD Docket**

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility 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.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

**Conclusion**

We carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Costs of Compliance**

About 50 Hamilton Sundstrand Power Systems model T-62T APUs in the worldwide fleet are of the affected design. Eight APUs installed on airplanes of U.S. registry are affected by this AD. We estimate that it will take about 8 work hours to remove and install an APU, and that the average labor rate is \$65 per work hour. A new or serviceable compressor impeller assembly, P/N 4502020 or 4502020A, may be installed provided it meets the cycles-since-new criteria in the compliance section of this AD. It will take about 55.5 hours to remove and replace affected compressor impeller assembly parts. New configuration replacement parts for each APU will cost about \$36,587. Based on these figures, we estimate the total cost of the AD to U.S. operators, to remove, upgrade, and install the APUs to be \$325,716.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We 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 this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

**2005-23-11 Hamilton Sundstrand:**  
Amendment 39-14369. Docket No. FAA-2005-21719; Directorate Identifier. 2005-NE-19-AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective December 14, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems) auxiliary power units (APUs) models T-62T-46C2, T-62T-46C2A, T-62T-46C3, T-62T-46C7, and T-62T-46C7A, with compressor impeller assembly, part number (P/N) 4502020 or 4502020A installed. These APUs are installed on, but not limited to, BAE Systems AVRO 146, Fokker 50, Saab 2000, and Saab 340 airplanes.

**Unsafe Condition**

(d) This AD results from two reports of uncontained failures of compressor impeller assemblies. We are issuing this AD to prevent an uncontained APU failure and damage to 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.

(f) For APUs with compressor impeller assemblies that have 12,000 or more cycles-since-new (CSN) accumulated on the effective date of this AD, remove compressor impeller assemblies from service before accumulating 500 additional cycles.

(g) For APUs with compressor impeller assemblies that have fewer than 12,000 CSN on the effective date of this AD, remove compressor impeller assemblies from service at or before accumulating 12,500 CSN.

**Alternative Methods of Compliance**

(h) The Manager, Los Angeles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(i) Hamilton Sundstrand Service Bulletins No. 4500090-49-33, dated January 6, 2005, No. 4500482-49-33, dated January 6, 2005, No. 4501578-49-22, dated January 13, 2005, No. 4501690-49-47, dated November 19, 2005, and No. 4501909-49-16, dated January 13, 2005, pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on November 2, 2005.

**Peter A. White,**

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

[FR Doc. 05-22208 Filed 11-8-05; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9222]

RIN 1545-BD49

**Guidance Under Section 951 for Determining Pro Rata Share; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document corrects final regulations (TD 9222) that were published in the **Federal Register** on Thursday, August 25, 2005 (70 FR 49864).

The final regulations under section 951(a) of the Internal Revenue Code (Code) 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, and previously excluded subpart F income withdrawn from foreign base company shipping operations.

**DATES:** This correction is effective August 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Vinnik, (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The final regulations (TD 9222) that are the subject of this correction are under section 951(a) of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 9222) contain an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

■ Accordingly, the publication of the final regulations (TD 9222), which was the subject of FR Doc. 05-16611, is corrected as follows:

■ On page 49864, column 2, in the preamble under the paragraph heading, "A. Amounts Determined Under Section 956 of the Code" second paragraph, line 4, the language "to section 956 under

§ 1.951-1(e)." is corrected to read "to section 956 under § 1.951-1(e).".

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 05-22262 Filed 11-8-05; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9222]

RIN 1545-BD49

**Guidance Under Section 951 for Determining Pro Rata Share; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document corrects final regulations (TD 9222) that were published in the **Federal Register** on Thursday, August 25, 2005 (70 FR 49864). The final regulations under section 951(a) of the Internal Revenue Code (Code) 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, and previously excluded subpart F income withdrawn from foreign base company shipping operations.

**DATES:** This correction is effective August 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Vinnik, (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The final regulations (TD 9222) that are the subject of this correction are under section 951(a) of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 9222) contain errors that may prove to be misleading and are in need of clarification.

**List of Subjects 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## Correction of Publication

■ Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

### 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 \* \* \*

#### § 1.951–1 [Corrected]

- 1. In § 1.951–1(a), the undesignated paragraph is designated as paragraph (a)(3).
- 2. Section 1.951–1(e)(6), paragraph (ii) of *Example 5*, sixth sentence, the language “common shareholders by reference to the” is removed and the language “common shares by reference to the” is added in its place.
- 3. Section 1.951–1(e)(6), paragraph (i) of *Example 7*, sixth sentence, the language “income of United States shareholder under” is removed and the language “income of a United States shareholder under” is added in its place.
- 4. Section 1.951–1(e)(6), paragraph (i) of *Example 8*, third sentence, the language “Foreign Individual N, a foreign individual.” is removed and the language “Individual N, a foreign individual.” is added in its place.

Cynthia E. Grigsby,

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 05–22260 Filed 11–8–05; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–2005–0280; FRL–7743–5]

### 2-Bromo-2-Nitro-1,3-Propanediol (Bronopol); Exemptions from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes exemptions from the requirement of a tolerance for residues of 2-bromo-2-nitro-1,3-propanediol, which is also known as bronopol (Chemical Abstracts Service (CAS) Registry Number (Reg. No.) 52–51–7; 1,3-propanediol, 2-bromo-2-nitro- (9CI)), when used as an inert ingredient in-can preservative at 0.04% or less by weight of the total

pesticide formulation when applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.910, and when applied to animals under 40 CFR 180.930. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-bromo-2-nitro-1,3-propanediol.

**DATES:** This regulation is effective November 9, 2005. Objections and requests for hearings must be received on or before January 9, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2005–0280. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: [angulo.karen@epa.gov](mailto:angulo.karen@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)

- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

## II. Background and Statutory Findings

In the **Federal Register** of December 24, 2002 (67 FR 78459) (FRL–7277–5), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 2E6475) by BASF Corporation, 3000 Continental Drive - North, Mount Olive, NJ 07828–1234. The petition requested that exemptions from the requirement of a tolerance be established for residues of 2-bromo-2-nitro-1,3-propanediol under 40 CFR 180.910 (growing crops or to raw agricultural commodities after harvest) and under 40 CFR 180.930 (animals) when it is used as an inert ingredient in-can preservative at 0.04% or less by weight of the total pesticide formulation. This notice included a summary of the petition prepared by the petitioner BASF.

For ease of reading in this document, 2-bromo-2-nitro-1,3-propanediol will be referred to as bronopol. The CAS Reg. No. of bronopol is 52–51–7 and the CAS name is 1,3-propanediol, 2-bromo-2-nitro- (9CI).

Comments were received from the United States Food and Drug Administration (FDA) in response to the notice of filing. FDA’s comments pertained to the possible formation of n-

nitrosoamines, which are potentially carcinogenic compounds, when pesticide formulations containing bronopol also contain a nitrosatable amine. Rebuttals to FDA's comments were submitted from two companies. EPA acknowledges the concerns of FDA. The Agency evaluated the carcinogenic potential of bronopol and found there to be evidence of non-carcinogenicity for humans based on a lack of cancer effects in acceptable studies with two animal species, the rat and mouse. It should be noted that n-nitrosoamines are also possibly formed by the action of bronopol with naturally occurring nitrosatable amines that are present in the diet of humans or are present as bodily constituents. In addition, Agency policy requires that pesticidal formulations be analyzed for nitrosamine content, and limits the allowable amount to 1 part per million (ppm). Pesticide formulations containing bronopol will be subject to this requirement.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

### III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bronopol are discussed in this unit.

A Reregistration Eligibility Decision (RED) was completed in 1995 for bronopol. The RED is available on the Agency's website at [www.epa.gov/pesticides/reregistration/status.htm](http://www.epa.gov/pesticides/reregistration/status.htm). The Agency is not aware of any more recent information that changes the risk findings of the RED, therefore, the toxicity findings of the RED are being used here for the evaluation of the petition. The following briefly summarizes the toxicity findings of the RED.

Bronopol is moderately toxic in acute oral toxicity studies with rats, with a lethal dose (LD)<sub>50</sub> of 307 milligrams/kilogram (mg/kg) for males and 342 mg/kg for females (Toxicity Category II) (Toxicity Category I has the highest toxicity and Category IV the lowest). In an acute inhalation study on the rat, bronopol was found to be slightly toxic with an lethal concentration (LC)<sub>50</sub> of > 5 mg/liter (L) (Toxicity Category III).

Results from an acute dermal toxicity study (rat) suggest that bronopol is highly toxic by the dermal route (Toxicity Category I), with an LC<sub>50</sub> of 64 to 160 mg/kg. Slight to moderate erythema and slight to severe edema was noted, and the results of this study determined that bronopol was a slight to severe irritant (Toxicity Category II). In a study to determine dermal sensitization potential (ai >98.8%, guinea pigs), bronopol was determined not to be a skin sensitizer. In addition, bronopol has been shown to be a corrosive eye irritation (Toxicity Category I).

A 90-day oral toxicity study using rats indicated that bronopol is a severe gastrointestinal irritant. The no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) for systemic toxicity, for both sexes, are 20 mg/kg/day and 80 mg/kg/day, respectively. A similar study in beagle dogs indicated only treatment-related effects of increased liver and spleen weights in the high dose group. In a 90-day dermal toxicity study in rabbits, a NOAEL of 2 mg/kg/day and a

LOAEL of 5 mg/kg/day were determined based on dermal irritation.

A chronic feeding/carcinogenicity study with rats resulted in high mortality, stomach lesions, and severe reduction in body weight gain. The unpalatability of bronopol reduced the water intake and urine output in a dose-related manner in all treated groups, which may have affected the results of the study. Based on the above findings, the systemic NOAEL and LOAEL for both sexes are 10 mg/kg/day and 40 mg/kg/day, respectively. In a chronic dermal/carcinogenicity study, male mice exhibited moderate reduction in body weight gain in the high dose group. Bronopol was not determined to be carcinogenic in either study. The EPA Office of Pesticide Program's Reference Dose (RfD)/Peer Review Committee evaluated the carcinogenic potential of bronopol and found there to be evidence of non-carcinogenicity for humans based on a lack of evidence of cancer effects in acceptable studies. In addition, bronopol was not mutagenic in four mutagenicity studies.

Developmental toxicity studies were conducted using rats and rabbits. The results showed marginal to no effects in the rat study and effects only at the high dose level in the rabbit study. In the study on rats, no developmental effects could be attributed to the administration of bronopol, and the highest dose of >80 mg/kg/day is considered to be the NOAEL for both maternal and developmental toxicity. In the study on rabbits, the maternal and developmental NOAEL and LOAEL are 40 mg/kg/day and 80 mg/kg/day (the highest dose group), respectively. The effects observed only in the 80 mg/kg/day group include decreased fetal body weight in both sexes (10%), and an increase in fetuses with major external/visceral and skeletal abnormalities (6.9% – 29.5%).

A reproductive toxicity study using rats reported effects at the mid- to high-dose levels, including increases in kidney, thyroid, and adrenal weights, decreases in liver and body weights. The NOAEL and LOAEL for systemic toxicity are 25 mg/kg/day and 70 mg/kg/day, respectively. Reproductive toxicity was observed only in the high-dose group as evidenced by a slight decrease in the female fertility index during the F<sub>1</sub> mating. The NOAEL and LOAEL for reproductive toxicity are 70 mg/kg/day and 200 mg/kg/day, respectively.

For metabolism, the results from four studies show that bronopol administered orally was rapidly absorbed and rapidly excreted by the rats of both sexes, with urine being the major route of excretion.

For ecological risks, bronopol is practically nontoxic to slightly toxic to birds; slightly to moderately toxic to freshwater fish and terrestrial invertebrates; moderately to highly toxic to estuarine/marine invertebrates; and slightly toxic to estuarine/marine fish. Based on bronopol's low octanol/water ratio and high solubility in water, it is not expected to bioaccumulate. Accumulation reportedly does not occur in tested mammals and metabolism is also reported to be rapid and complete.

#### IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

##### A. Dietary Exposure

1. *Food.* A dietary exposure analysis for the inert ingredient use of bronopol was conducted using the generic screening model for estimating inert ingredient dietary exposure. The dietary assessment is unrefined and extremely conservative in nature because the screening model assumes that the inert ingredient is used on all commodities, and that 100 percent of crops are treated with the inert ingredient. Further, the screening model assumes residues will be present for every consumed commodity (including meat, milk, poultry and eggs) that is included in the Dietary Exposure Evaluation Model (DEEM<sup>TM</sup>). The screening model does not specifically include an application rate input, rather it is based on tolerances for pesticide active ingredients that are typically found in agricultural food use products at concentrations greater than 50%. Therefore, to more accurately estimate residues resulting from bronopol's lower application rate limitation of 0.04% (the tolerance exemption limitation proposed by the petitioner), the results from the screening model were adjusted by a factor of 1250 ( $50\% \div 0.04\%$ ).

The results for acute and chronic dietary exposure for all population subgroups are considered to be not of concern. The highest dietary exposure estimate was for children (1–2 years), where the acute dietary risk was estimated to be 0.0007512 mg/kg/day and 0.19% of the acute Population Adjusted Dose (aPAD), and where the chronic dietary risk was estimated to be 0.0003376 mg/kg/day and 0.34% of the

chronic Population Adjusted Dose (cPAD). These are well-below any dose level at which an adverse effect is expected from exposure to bronopol when it is used as an inert ingredient in-can preservative at 0.04% or less by weight of the total pesticide formulation.

2. *Drinking water exposure.* Bronopol is expected to have a relatively short half-life upon release into the environment. Bronopol is not anticipated to be present in drinking water when used as an inert ingredient in-can preservative at 0.04% or less by weight of the total pesticide formulation.

##### B. Other Non-Occupational Exposure

Pesticide products containing bronopol as an in-can preservative may be used in residential settings. Considering the small amount of bronopol that will be used in pesticide formulations (no more than 0.04% by weight), inhalation and dermal exposures of concern are not anticipated from residential uses.

#### V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." Unlike other pesticide chemicals for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to bronopol. For the purposes of this tolerance action, therefore, EPA has not assumed that bronopol has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

#### VI. Determination of Safety for U.S. Population, Infants and Children

Based on the information in this preamble and on the modeled exposure levels that are well-below any dose level where adverse effects are expected, EPA concludes that there is a reasonable

certainty of no harm to any population subgroup from aggregate exposure to residues of bronopol. Accordingly, EPA finds that exempting bronopol from the requirement of a tolerance will be safe for the general population including infants and children.

#### VII. Other Considerations

##### A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect . . ." EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing bronopol for endocrine effects may be required.

##### B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

##### C. Existing Tolerances

There are no existing tolerances or tolerance exemptions for bronopol.

##### D. International Tolerances

The Agency is not aware of any country requiring a tolerance for bronopol, nor have any CODEX maximum residue levels been established for any food crops at this time.

#### VIII. Conclusions

There is sufficient information on bronopol to conduct this assessment. Bronopol has been shown to have significant dermal acute toxicity, and eye and gastrointestinal irritation, but it is not a skin sensitizer. Study results indicate that bronopol has moderate acute and chronic oral toxicity, and slight acute inhalation toxicity. It is not considered to be carcinogenic. For developmental effects, marginal to no effects were reported in the rat study and effects were observed only at the high dose level in the rabbit study. Reproductive toxicity was observed only in the high-dose group as evidenced by a slight decrease in the female fertility index during the F<sup>1</sup> mating.

Although, bronopol does have toxicity, the small amount that will be permitted for use in pesticide

formulations (0.04% or less by weight) is expected to result in no effects of concern for all endpoints, including residential exposures. The results from a conservative dietary screening model show that acute and chronic dietary exposure for all population subgroups are considered to be not of concern. The highest dietary exposure estimates from the conservative screening model are well-below any dose level at which an adverse effect is expected. Bronopol is expected to have a relatively short half-life upon release into the environment, therefore, its contribution to drinking water is not expected.

Considering the information above, there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to the pesticide chemical (bronopol) residue, including all anticipated dietary exposures and all other exposures for which there is reliable information. Exemptions from the requirement of a tolerance are established for 2-bromo-2-nitro-1,3-propanediol; (CAS Reg. No. 52-51-7;) when used as an inert ingredient in-can preservative at 0.04% or less by weight of the total pesticide formulation when applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.910, and when applied to animals under 40 CFR 180.930.

## IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

you must identify docket ID number OPP-2005-0280 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 9, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0280, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may

also submit an electronic copy of your request at many Federal Depository Libraries.

### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are



established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175.

Thus, Executive Order 13175 does not apply to this rule.

**XI. Congressional Review Act**

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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 28, 2005.  
**Lois Rossi**,  
*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910 the table is amended by adding alphabetically the following inert ingredient to read as follows:

**§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.**

Inert Ingredient	Limits	Uses
* * *	* * *	* * *
2-Bromo-2-nitro-1,3-propanediol (CAS Reg. No. 52-51-7)	0.04% or less by weight of the total pesticide formulation	In-can preservative
* * *	* * *	* * *
* * *	* * *	

■ 3. In § 180.930 the table is amended by adding alphabetically the following inert ingredient to read as follows:

**§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.**

Inert Ingredient	Limits	Uses
* * *	* * *	* * *
2-Bromo-2-nitro-1,3-propanediol (CAS Reg. No. 52-51-7)	0.04% or less by weight of the total pesticide formulation	In-can preservative
* * *	* * *	* * *
* * *	* * *	

[FR Doc. 05-22255 Filed 11-8-05; 8:45 am]  
**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2005-0254; FRL-7740-8]

**Flucarbazon-sodium; Time-Limited Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for combined residues of flucarbazon-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[2(trifluoromethoxy)phenyl] sulfonyl-1H-1,2,4-triazole 1-carboxamide, sodium salt and its N-desmethyl metabolite in or on wheat, forage at 0.30 parts per million (ppm); wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat, straw at 0.05 ppm; and combined residues of flucarbazon-sodium and its metabolites converted to 2-(trifluoromethoxy) benzene sulfonamide and calculated as flucarbazon-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses, and sheep at 1.5 ppm. Arysta LifeScience North America Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on November 30, 2006.

**DATES:** This regulation is effective November 9, 2005. Objections and requests for hearings must be received on or before January 9, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in

Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0254. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5697; e-mail address: [Tompkins.Jim@epa.gov](mailto:Tompkins.Jim@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in <http://docket.epa.gov/edkpub/index.jsp>. If you have any questions regarding the applicability of this action to a particular entity, consult the person

#### **listed under FOR FURTHER INFORMATION CONTACT.**

#### *B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.html>.

### **II. Background and Statutory Findings**

In the **Federal Register** of September 29, 2000 (65 FR 58364) (FRL-6745-9), EPA issued a time-limited tolerance for combined residues of the herbicide, flucarbazone-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[2(trifluoromethoxy)phenyl] sulfonyl-1H-1,2,4-triazole 1-carboxamide, sodium salt and its N-desmethyl metabolite in or on wheat, forage at 0.30 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat, straw at 0.05 ppm; and combined residues of flucarbazone-sodium and its metabolites converted to 2-(trifluoromethoxy) benzene sulfonamide and calculated as flucarbazone-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses, and sheep at 1.5 ppm. The tolerance will expire on November 1, 2005.

In the **Federal Register** of July 27, 2005 (70 FR 43412) (FRL-7727-2), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F6949) by Arysta LifeScience North America Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105. The petition requested that 40 CFR 180.562 be amended by establishing a tolerance for combined residues of the herbicide, flucarbazone-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[2(trifluoromethoxy)phenyl] sulfonyl-1H-1,2,4-triazole 1-carboxamide, sodium salt and its N-desmethyl metabolite in or on wheat, forage at 0.30 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat, straw at 0.05 ppm; and combined residues of flucarbazone-sodium and its metabolites converted to 2-(trifluoromethoxy) benzene sulfonamide and calculated as

flucarbazone-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses, and sheep at 1.5 ppm. This notice included a summary of the petition prepared by Arysta LifeScience North America Corporation, the registrant. Comments were received on the notice of filing. EPA response to those comments is discussed in Unit IV.D.

The time limited-tolerance previously issued September 29, 2000 (65 FR 58364) (FRL-6745-9), will be extended for 13 months and will expire on November 30, 2006. A time-limited tolerance will be issued due to outstanding studies (independent laboratory validations of: Analytical Method for the Determination O-Desmethyl MKH 6562 (Metabolite of MKH 6562 in Soil by High Performance Liquid Chromatography Tandem Mass Spectrometry), Analytical Method for the Determination of MKH 6562 and Metabolites NODT (N,O-dimethyltriazolinone), Sulfonic Acid and Sulfonamide in Soil by High Performance Liquid Chromatography Tandem Mass Spectrometry, and Analytical Method for the Determination of MKH 6562 and Three Metabolites in Groundwater by High Performance Liquid Chromatography Tandem Mass Spectrometry) will be submitted to the Agency by the registrant in January 2006.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of the FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of

the risk assessment process, see <http://docket.epa.gov/edkpub/index.jsp>.

### III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of flucarbazone-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[2(trifluoromethoxy)phenyl] sulfonyl-1H-1,2,4-triazole 1-carboxamide, sodium salt and its N-desmethyl metabolite in or on wheat, forage at 0.30 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat, straw at 0.05 ppm; and combined residues of flucarbazone-sodium and its metabolites converted to 2-(trifluoromethoxy) benzene sulfonamide and calculated as flucarbazone-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses, and sheep at 1.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by flucarbazone-sodium as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at <http://docket.epa.gov/edkpub/index.jsp>.

#### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is

applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at <http://docket.epa.gov/edkpub/index.jsp>.

A summary of the toxicological endpoints for flucarbazone-sodium used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363) (FRL-6745-9).

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established 40 CFR 180.562 for the combined residues of flucarbazone-sodium, in or on wheat, forage at 0.30 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat, straw at 0.05 ppm; and combined residues of flucarbazone-sodium and its metabolites converted to 2-(trifluoromethoxy) benzene sulfonamide and calculated as flucarbazone-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses, and sheep at 1.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from flucarbazone-sodium in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1989–1992 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

A summary of the acute dietary exposure assessment is discussed in Unit III.C. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

ii. *Chronic exposure.* In conducting this chronic dietary exposure and risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 Nationwide CSFII and accumulated exposure to the chemical for each commodity.

A summary of the chronic dietary exposure assessment is discussed in Unit III.C. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

iii. *Cancer.* A summary of the dietary exposure assessment is discussed in Unit III.C. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for flucarbazone-sodium in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of flucarbazone-sodium. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://docket.epa.gov/edkpub/index.jsp>.

A summary of the dietary exposure from drinking water assessment is discussed in Unit III. C. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

Based on the generic expected environmental concentration (GENEEC) and screening concentration in ground water (SCI-GROW) models, the estimated environmental concentrations (EECs) of flucarbazone-sodium for acute exposures are estimated to be 1.42 parts per billion (ppb) for surface water and

0.2 ppb for ground water. The EECs for chronic exposures are estimated to be 1.25 ppb for surface water and 0.2 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flucarbazon-sodium is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to flucarbazon-sodium and any other substances and flucarbazon-sodium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that flucarbazon-sodium has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in

calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* A summary of the prenatal and postnatal sensitivity assessment is discussed in Unit III.D. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

3. *Conclusion.* There is a complete toxicity data base for flucarbazon-sodium and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. A summary of the safety factor is discussed in Unit III.D. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

#### E. Aggregate Risks and Determination of Safety

1. *Acute risk.* A summary of the acute risk assessment is discussed in Unit III.E. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

2. *Chronic risk.* A summary of the chronic risk assessment is discussed in Unit III.E. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

3. *Short-term risk.* A summary of the short-term risk assessment is discussed in Unit III.E. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

4. *Intermediate-term risk.* A summary of the intermediate-term risk assessment is discussed in Unit III.E. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

5. *Aggregate cancer risk for U.S. population.* A summary of the aggregate cancer risk for U.S. population assessment is discussed in Unit III.E. of the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58363).

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to flucarbazon-sodium residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

The petitioner has proposed residue analytical methods for tolerance enforcement in wheat and livestock commodities. The analytical enforcement method for wheat employs accelerated solvent extraction, clean-up using solid phase extraction columns followed by detection and quantitation by liquid chromatography/tandem mass spectroscopy (LC/MS/MS). The

analytical method for livestock commodities is a common moiety method which measures residues of flucarbazon-sodium (MKH6562) in animal tissues and milk by extracting and hydrolyzing MKH 6562 and MKH 6562-related residues to MKH 6562 sulfonamide. Detection is achieved using negative ion electrospray mass spectrometry using deuterated MKH 6562 sulfonamide as an internal standard. Both methods have undergone successful validations by independent laboratories and have been accepted by the Agency. The analytical standards for these methods are available from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

A default Maximum Residue Limit (MRL) of 0.01 ppm has been established in Canada for residues of flucarbazon-sodium and its N-desmethyl metabolite on wheat grain. This value is consistent with the tolerance being established in the United States on wheat grain. There are no Codex MRLs for this compound on wheat. Therefore, no compatibility issues exist with Codex in regard to the U.S. tolerances discussed in this review.

##### C. Conditions

None.

##### D. Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the supposed harmful effects to the human genes. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to flucarbazon-sodium including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. 70 FR 1349, 1354 (January 7, 2005); 69 FR 63083, 63096 (October 29, 2004).

#### V. Conclusion

Therefore, the time-limited tolerance (expires November 30, 2006) is established for combined residues of flucarbazon-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[2(trifluoromethoxy)phenyl] sulfonyl-1H-1,2,4-triazole 1-carboxamide, sodium salt and its N-desmethyl metabolite, in or on wheat, forage at 0.30 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat,

straw at 0.05 ppm; and combined residues of flucarbazone-sodium and its metabolites converted to 2-(trifluoromethoxy) benzene sulfonamide and calculated as flucarbazone-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses, and sheep at 1.5ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0254 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 9, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI

must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0254, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in

response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of

regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### VIII. Congressional Review Act

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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 28, 2005.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.562 is revised to read as follows:

#### § 180.562 Flucarbazone-sodium; tolerances for residues.

(a) *General.* (1) Time-limited tolerances are established for combined residues of the herbicide flucarbazone-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[[2(trifluoromethoxy)phenyl] sulfonyl]-1H-1,2,4-triazole 1-carboxamide, sodium salt) and its N-desmethyl metabolite in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Wheat, forage .....	0.30 .....	11/30/06
Wheat, grain .....	0.01 .....	11/30/06
Wheat, hay .....	0.10 .....	11/30/06
Wheat, straw .....	0.05 .....	11/30/06

(2) Time-limited tolerances are established for combined residues of the herbicide flucarbazone-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[[2(trifluoromethoxy)phenyl] sulfonyl]-1H-1,2,4-triazole 1-carboxamide, sodium salt) and its metabolites converted to 2-(trifluoromethoxy)benzene sulfonamide and calculated as flucarbazone-sodium in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Cattle, liver .....	1.50 .....	11/30/06
Cattle, meat .....	0.01 .....	11/30/06
Cattle, meat by-products except liver.	0.01 .....	11/30/06
Goat, liver .....	1.50 .....	11/30/06
Goat, meat .....	0.01 .....	11/30/06
Goat, meat by-products except liver.	0.01 .....	11/30/06
Hog, liver .....	1.50 .....	11/30/06

Commodity	Parts per million	Expiration/Revocation Date
Hog, meat .....	0.01 .....	11/30/06
Hog, meat by-products except liver.	0.01 .....	11/30/06
Horse, liver .....	1.50 .....	11/30/06
Horse, meat .....	0.01 .....	11/30/06
Horse, meat by-products except liver.	0.01 .....	11/30/06
Milk .....	0.005 .....	11/30/06
Sheep, liver .....	1.50 .....	11/30/06
Sheep, meat .....	0.01 .....	11/30/06
Sheep, meat by-products except liver.	0.01 .....	11/30/06

(b) *Section 18 emergency exemptions.*

[Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertant residues.* [Reserved]

[FR Doc. 05-22254 Filed 11-8-05; 8:45 am]

BILLING CODE 6560-50-S

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 20 and 68

[WT Docket 01-309, FCC 05-166]

#### Hearing Aid Compatibility Requirements for Wireless Carriers Offering Dual-Band GSM Handsets; Request for Waiver of Hearing Aid Compatibility Requirements for Cingular Wireless LLC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for waiver.

**SUMMARY:** The Federal Communications Commission (FCC or Commission) ruled that, until August 1, 2006, it will base the hearing aid compatibility compliance rating of dual-band GSM handsets on their operation in the 1900 MHz band only. Given its broad applicability, the Commission clarified that its action applies to all handset manufacturers, carriers and service providers that offer dual-band GSM wireless handsets that operate in both the 850 MHz and 1900 MHz bands. Consistent with this action, the Commission granted in part a request from Cingular Wireless LLC (Cingular). Finally, the Commission imposed conditions on Cingular and all other entities that elect to avail themselves of the temporary relief granted by the Memorandum Opinion and Order (MO&O).

**DATES:** Effective September 8, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Angela Giancarlo, Associate Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554, (202) 418-0680, TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order (MO&O) adopted on September 7, 2005 and released on September 8, 2005. The full text of the MO&O is available for public inspection. In the MO&O and pursuant to its waiver authority, the FCC provided temporary, conditional relief from certain hearing aid compatibility requirements for carriers and manufacturers that offer dual-band digital wireless handsets that use the GSM air interface in both the 850 MHz cellular and 1900 MHz broadband PCS bands. The FCC ruled that, until August 1, 2006, it will base the hearing aid compatibility compliance rating of dual-band GSM handsets on their operation in the 1900 MHz band only. This action applies to all handset manufacturers, wireless carriers and service providers that offer dual-band GSM handsets that operate in both the 850 MHz and 1900 MHz bands. In connection with this action, the FCC also granted, in part and with conditions, a request for waiver from Cingular. Finally, the FCC imposed reporting and outreach conditions on Cingular and any other entity that elects to take advantage of the relief provided in the MO&O.

2. By way of background, since 2003, the Commission has taken a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications, including adopting ANSI C63.19 as the applicable technical standard for achieving hearing aid compatibility of digital wireless handsets. To facilitate deployment of digital wireless handsets compliant with this technical standard, the Commission established phased-in deployment benchmark dates for the offer of hearing aid-compatible digital wireless handsets. In this regard the Commission required manufacturers and carriers to offer hearing aid-compatible digital wireless handsets by September 16, 2005, unless they qualified for a "*de minimis*" exception (*i.e.*, offer two or fewer digital wireless handsets in the U.S.).

3. In April 2005, the Commission clarified that applicants for hearing aid compatibility certification could rely on either the 2001 or draft 2005 version of the technical standard, noting that allowing the use of the new measurement and rating procedures

would assist manufacturers and carriers in meeting their compliance obligations. In June 2005, the Commission established that by September 16, 2005, Tier I wireless carriers must offer four digital wireless handset models per air interface, or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide, that meet a U3 rating.

4. Following these actions, the HAC Incubator Working Group 9 (Working Group 9), a technical group focused on hearing aid compatibility in wireless handsets employing the GSM air interface, and Cingular, a Tier I wireless carrier, requested relief from the hearing aid compatibility requirements for dual-band GSM handsets in the 850 MHz and 1900 MHz bands. Working Group 9 recommended that the Commission accept an interim hearing aid compatibility rating of a dual-band handset employing the GSM air interface based on its operation in the 1900 MHz band only, rather than to rate the handset based on its operation in both the 850 MHz and 1900 MHz bands.

5. In addition, Cingular requested waiver of the requirement that it offer at least four handsets meeting a U3 or higher interference rating until such time as the ANSI C63.19 standard has been updated to reflect band differences between 1.9 GHz and 850 MHz. Cingular argued that compliance with the September 16, 2005, deployment benchmark is "technologically infeasible" as it pertains to dual-band GSM handsets. In exchange, Cingular offered to comply with a number of conditions. Representatives of hearing aid manufacturers and consumers with hearing disabilities, the Hearing Industries Association (HIA), and Self Help for Hard of Hearing People (SHHH), respectively, filed comments in support of Cingular's proposal for temporary, conditional relief.

6. In the MO&O, the Commission found that adoption of the Working Group recommendation would not frustrate the underlying purpose of the benchmark requirements for deployment of hearing aid-compatible digital wireless handsets. The Commission determined that temporary acceptance of the hearing aid compatibility rating for 1900 MHz operation as the overall rating for dual-band GSM digital wireless handsets would increase users' choices by ensuring the availability of dual-band GSM handsets and avoids delaying introduction of such devices that could be used by consumers with and without hearing disabilities. Further, the Commission found that grant of the requested relief would allow

manufacturers and carriers to focus on bringing to market fully compliant handsets.

7. The Commission further found that adoption of the Working Group 9 recommendation satisfies the public interest, particularly given the broad support for the recommendation from interested parties. In addition, the Commission determined that Working Group 9's commitment to resolving the current technical challenge within a limited period of time serves the public interest and advances the original intent of the Commission's rules—to expeditiously introduce digital wireless handsets that are compatible with hearing aids—and continue to work collectively and cooperatively to resolve the current challenge.

8. Accordingly, the Commission ruled that it would accept, until August 1, 2006, the hearing aid compatibility compliance rating for operation in the 1900 MHz band as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands. Given its broad applicability, the Commission clarified that its action applies to all handset manufacturers, carriers and service providers that offer dual-band GSM wireless handsets that operate in both the 850 MHz and 1900 MHz bands.

9. Consistent with this action, the Commission granted Cingular's waiver request in part, but denied the request to the extent that it seeks broader relief. In adopting the Working Group 9 recommendation, the Commission provided Cingular with a means to comply with the September 16, 2005, preliminary deployment benchmark obligation set forth in section 20.19(c)(3)(i)(A) of the Commission's rules without the need to *per se* exempt any particular dual-band GSM handset. The Commission found Cingular's "open-ended" timetable approach would frustrate the purpose of the rule and create uncertainty and reiterated its expectation that wireless carriers, service providers and handset manufacturers make available dual-band GSM digital wireless handsets with a U3 or higher rating in both the 850 MHz and 1900 MHz bands no later than August 1, 2006. The Commission also found it premature to declare that achieving hearing aid compatibility in GSM digital wireless handsets is "technologically infeasible," given the ongoing efforts to resolve the technical challenges.

10. Finally, with regard to conditions associated with the relief, the Commission found that the conditions proposed by Cingular with some



modifications would serve the public interest. The conditions adopted by the Commission are reprinted below as set forth in the MO&O but without footnotes.

• **Reporting**

A. Cingular and any other entity that avails itself of the relief afforded by this order must so notify the Commission in its upcoming November 17, 2005, hearing aid compatibility compliance report. In addition to providing notice, such entity must include detailed information in its report that describes and discusses with specificity the status of its efforts to offer dual-band GSM handsets that achieve a rating of U3 or higher in the 850 MHz band in addition to the 1900 MHz band. We note that this condition is consistent with the requirement that compliance reports provide information regarding "any activities related to ANSI C63.19 or other standards work intended to promote compliance with" the Commission's rules and policies.

B. Cingular and any other entity that avails itself of the relief afforded by this order and that so notifies the Commission on or before November 17, 2005, (as referenced in condition 1, above), must include in its May 17, 2006, hearing aid compatibility compliance report detailed information that describes and discusses with specificity the status of its efforts to offer dual-band GSM handsets that achieve a rating of U3 or higher in the 850 MHz band in addition to the 1900 MHz band.

C. Cingular must file an additional report with the Commission no later than February 1, 2006. This report must include detailed information that describes and discusses with specificity the status of its efforts to offer dual-band GSM handsets that achieve a rating of U3 or higher in the 850 MHz band in addition to the 1900 MHz band.

• **Consumer Outreach**

A. Cingular and any other entity that avails itself of the relief afforded by this order must ensure a thirty-day trial period or otherwise adopt an acceptable, flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets. In addition, such entity must include detailed information in its November 17, 2005, and May 17, 2006, hearing aid compatibility compliance reports that describes and discusses with specificity efforts to ensure a thirty-day trial period or otherwise flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets. We note that this condition makes mandatory one of the outreach efforts described by the Commission in

the *Hearing Aid Compatibility Order* and further discussed in the *Hearing Aid Compatibility Reconsideration Order*. Also, this condition is consistent with the requirement that compliance reports provide information regarding "outreach efforts."

B. Cingular and any other entity that avails itself of the relief afforded by this order must take reasonable efforts to make available current technical and anecdotal information for access by the public regarding the hearing aid compatibility of specific GSM digital wireless handsets. In addition, such entity must include detailed information in its November 17, 2005, and May 17, 2006, hearing aid compatibility compliance reports that describes and discusses with specificity efforts to comply with this condition. We note that this condition is consistent with the outreach efforts described by the Commission in the *Hearing Aid Compatibility Order*, as well as the requirement that compliance reports provide information regarding "outreach efforts."

**I. Procedural Matters**

*A. Paperwork Reduction Act Analysis*

11. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. Therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

*B. Congressional Review Act*

12. The Commission will not send a copy of this MO&O pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A), because this MO&O does not amend rules as defined in the CRA, 5 U.S.C. 804(3).

**II. Ordering Clauses**

13. The Commission, acting pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and section 1.925 of the Commission's rules, 47 CFR 1.925, grants, to the extent set forth in the MO&O, the waiver relief requested in the Letter from Thomas Goode, counsel to the Alliance for Telecommunications Industry Solutions, and in the Presentation of the HAC Incubator Working Group 9, filed on August 1, 2005. Second, the Commission grants, to the extent set forth in the MO&O, the petition for

waiver of section 20.19(c)(3)(i)(A) of the Commission's rules, 47 CFR 20.19(c)(3)(i)(A), filed by Cingular Wireless LLC on August 5, 2005.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05-22231 Filed 11-8-05; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF DEFENSE**

**48 CFR Part 239**

**[DFARS Case 2003-D054]**

**Defense Federal Acquisition Regulation Supplement; Information Technology Equipment—Screening of Government Inventory**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to delete obsolete procedures for screening of Government inventory before authorizing a contractor to purchase information technology equipment. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gabrielle Ward, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-2022; facsimile (703) 602-0350. Please cite DFARS Case 2003-D054.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.



This final rule is a result of the DFARS Transformation initiative. The rule deletes obsolete procedures for screening of Government inventory before authorizing a contractor to purchase information technology equipment. DoD now manages information technology equipment in the same manner as other Government property, in accordance with FAR Part 45 and DFARS Part 245.

DoD published a proposed rule at 69 FR 67884 on November 22, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes in this rule are limited to the deletion of obsolete procedures for screening the Government's inventory of information technology equipment.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

#### List of Subjects in 48 CFR Part 239

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 239 is amended as follows:

#### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for 48 CFR part 239 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### Subpart 239.73—[Removed and Reserved]

■ 2. Subpart 239.73 is removed and reserved.

[FR Doc. 05–22110 Filed 11–8–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 239

[DFARS Case 2003–D055]

### Defense Federal Acquisition Regulation Supplement; Acquisition of Telecommunications Services

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of telecommunications services. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gabrielle Ward, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2003–D055.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Amends DFARS 239.7401 to update terminology for consistency with the terminology used in the clause at DFARS 252.239–7016; and
- Revises DFARS 239.7405 to delete obsolete text and to add text addressing DoD's authority to enter into contracts for telecommunications services.

DoD published a proposed rule at 70 FR 8564 on February 22, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the

proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD policy for the acquisition of telecommunications services.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

#### List of Subjects in 48 CFR Part 239

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 239 is amended as follows:

#### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for 48 CFR part 239 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### 239.7401 [Amended]

■ 2. Section 239.7401 is amended in paragraph (e) by removing “Security,” and adding in its place “Securing.”.

■ 3. Section 239.7405 is revised to read as follows:

#### 239.7405 Delegated authority for telecommunications resources.

The contracting officer may enter into a telecommunications service contract on a month-to-month basis or for any longer period or series of periods, not to exceed a total of 10 years. See PGI 239.7405 for documents relating to this contracting authority, which the General Services Administration has delegated to DoD.

[FR Doc. 05–22111 Filed 11–8–05; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF DEFENSE****48 CFR Parts 239 and 252****[DFARS Case 2003–D053]****Defense Federal Acquisition Regulation Supplement; Update of Clauses for Telecommunications Services****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update clauses used in contracts for telecommunications services. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gabrielle Ward, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2003–D053.

**SUPPLEMENTARY INFORMATION:****A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Deletes an obsolete clause at DFARS 252.239–7003, Facilities and Services to be Furnished—Common Carriers; and
- Expands the applicability of the clauses at DFARS 252.239–7004, Orders for Facilities and Services; 252.239–7005, Rates, Charges, and Services; and 252.239–7007, Cancellation or Termination of Orders, to all carriers of telecommunications services. The

clauses previously applied only to common carriers (those subject to Federal Communications Commission or other governmental regulation). Expansion of these clauses to all carriers reflects the current business environment, where the differences between common and noncommon carriers have become less distinct.

DoD published a proposed rule at 69 FR 67885 on November 22, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes in this rule reflect current business practices for the acquisition of telecommunications services.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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.*

**List of Subjects in 48 CFR Parts 239 and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 239—ACQUISITION OF INFORMATION TECHNOLOGY****239.7406 [Amended]**

■ 2. Section 239.7406 is amended in paragraph (c)(6) by removing “—Common Carriers”.

**239.7411 [Amended]**

■ 3. Section 239.7411 is amended in paragraph (a) as follows:

- a. By removing paragraph (a)(2);
- b. By redesignating paragraphs (a)(3) through (a)(7) as paragraphs (a)(2) through (a)(6) respectively; and

■ c. In newly designated paragraphs (a)(2), (a)(3), and (a)(5), by removing “—Common Carriers”.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.239–7003 [Removed and Reserved]**

■ 4. Section 252.239–7003 is removed and reserved.

**252.239–7004 [Amended]**

■ 5. Section 252.239–7004 is amended as follows:

- a. In the section heading, by removing “—common carriers”;
- b. In the clause title, by removing “—COMMON CARRIERS”;
- c. By revising the clause date to read “(NOV 2005)”.

**252.239–7005 [Amended]**

■ 6. Section 252.239–7005 is amended as follows:

- a. In the section heading, by removing “—common carriers”;
- b. In the clause title, by removing “—COMMON CARRIERS”;
- c. By revising the clause date to read “(NOV 2005)”;
- d. In paragraph (f), in the first sentence, by removing “—Common Carriers”.

**252.239–7007 [Amended]**

■ 7. Section 252.239–7007 is amended as follows:

- a. In the section heading, by removing “—common carriers”;
- b. In the clause title, by removing “—COMMON CARRIERS”;
- c. By revising the clause date to read “(NOV 2005)”;
- d. In paragraph (b)(1), by removing “—Common Carriers”.

[FR Doc. 05–22109 Filed 11–8–05; 8:45 am]

**BILLING CODE 5001–08–P**

**DEPARTMENT OF DEFENSE****48 CFR Parts 242 and 252****[DFARS Case 2003–D023]****Defense Federal Acquisition Regulation Supplement; Contract Administration****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract administration and audit services. This rule is a result of a transformation initiative undertaken by

DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D023.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule:

- Deletes text that is unnecessary or duplicative of FAR policy in the areas of visits to contractor facilities; conduct of postaward conferences; review and negotiation of contractor costs and billing rates; use of contractor past performance information; and contractor internal controls.

- Deletes text on providing contract administration services to foreign governments and international organizations; coordination between corporate and individual administrative contracting officers; processing of contractor novation and change-of-name agreements; processing of voluntary refunds from contractors; and providing technical representatives at contractor facilities. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Updates terminology at DFARS 242.202(a)(i)(D).

- Updates the clause at DFARS 252.242-7004, Material Management and Accounting Systems, for consistency with the policy found at DFARS 242.7203(d)(5) regarding corrective action for a contractor's

failure to make adequate progress in correcting system deficiencies.

DoD published a proposed rule at 70 FR 19043 on April 12, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, clarifies, and streamlines DFARS text, but makes no significant change to DoD contracting policy.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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.*

**List of Subjects in 48 CFR Parts 242 and 252**

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 242 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 242 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

■ 2. Section 242.002 is amended by revising paragraph (S-70)(iii) to read as follows:

**242.002 Interagency agreements.**

\* \* \* \* \*

(S-70) \* \* \*

(iii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Headquarters, Defense Contract Management Agency, International and Federal Business Team. Contract administration offices provide services only upon request from

the CCP. The CCP shall follow the procedures at PGI 242.002(S-70)(iii).

■ 3. Section 242.202 is amended by revising paragraph (a)(i)(D) to read as follows:

**242.202 Assignment of contract administration.**

(a)(i) \* \* \*

(D) Management and professional support services;

\* \* \* \* \*

**Subpart 242.4—[Removed]**

■ 4. Subpart 242.4 is removed.

■ 5. Section 242.503-2 is revised to read as follows:

**242.503-2 Post-award conference procedure.**

DD Form 1484, Post-Award Conference Record, may be used in conducting the conference and in preparing the conference report.

**242.503-3, 242.570, and 242.704 [Removed]**

■ 6. Sections 242.503-3, 242.570, and 242.704 are removed.

■ 7. Section 242.705-1 is revised to read as follows:

**242.705-1 Contracting officer determination procedure.**

(a) *Applicability and responsibility.*

(1) The corporate administrative contracting officer and individual administrative contracting officers shall jointly decide how to conduct negotiations. Follow the procedures at PGI 242.705-1(a)(1) when negotiations are conducted on a coordinated basis.

**242.705-2 [Amended]**

■ 8. Section 242.705-2 is amended in paragraph (b)(2)(iii) by removing the last sentence.

**242.705-3, 242.801, and 242.1202 [Removed]**

■ 9. Sections 242.705-3, 242.801, and 242.1202 are removed.

■ 10. Section 242.1203 is revised to read as follows:

**242.1203 Processing agreements.**

The responsible contracting officer shall process and execute novation and change-of-name agreements in accordance with the procedures at PGI 242.1203.

**Subpart 242.15—[Removed]**

■ 11. Subpart 242.15 is removed.

■ 12. Section 242.7100 is revised to read as follows:

**242.7100 General.**

A voluntary refund is a payment or credit (adjustment under one or more

contracts or subcontracts) to the Government from a contractor or subcontractor that is not required by any contractual or other legal obligation. Follow the procedures at PGI 242.7100 for voluntary refunds.

#### **242.7101 and 242.7102 [Removed]**

■ 13. Sections 242.7101 and 242.7102 are removed.

■ 14. Sections 242.7400 and 242.7401 are revised to read as follows:

#### **242.7400 General.**

(a) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(b) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (see 201.602).

#### **242.7401 Procedures.**

When the program, project, or system manager determines that a technical representative is required, follow the procedures at PGI 242.7401.

#### **242.7500 and 242.7501 [Removed]**

■ 15. Sections 242.7500 and 242.7501 are removed.

#### **242.7502 and 242.7503 [Redesignated]**

■ 16. Sections 242.7502 and 242.7503 are redesignated as sections 242.7501 and 242.7502, respectively.

### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

#### **252.242-7000 [Removed and Reserved]**

■ 17. Section 252.242-7000 is removed and reserved.

■ 18. Section 252.242-7004 is amended by revising the clause date and adding paragraph (d)(4) to read as follows:

#### **252.242-7004 Material Management and Accounting System.**

\* \* \* \* \*

### **MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (NOV 2005)**

\* \* \* \* \*

(d) \* \* \*

(4) If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

(i) Elevate the issue to higher level management;

(ii) Further reduce progress payments and/or disallow costs on vouchers;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and

(iv) Issue cautions to contracting activities regarding the award of future contracts.

\* \* \* \* \*

[FR Doc. 05-22103 Filed 11-8-05; 8:45 am]

BILLING CODE 5001-08-P

## **DEPARTMENT OF DEFENSE**

### **48 CFR Part 243**

#### **[DFARS Case 2003-D024]**

### **Defense Federal Acquisition Regulation Supplement; Contract Modifications**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract modifications. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D024.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or

a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule:

- Deletes unnecessary text at DFARS 243.102, 243.105(a)(ii), 243.107, and 243.204-71.

- Deletes obsolete text at DFARS 243.105(a)(i).

- Updates text at DFARS 243.107-70 for consistency with the requirements of the clause at DFARS 252.249-7002, Notification of Anticipated Contract Termination or Reduction.

- Clarifies procedures at DFARS 243.204-70 for determining if a request for equitable contract adjustment meets the dollar threshold for requiring contractor certification.

- Deletes text at DFARS 243.170, 243.171, and 243.204 containing procedures for identification of foreign military sales requirements, for obligation or deobligation of contract funds, and for review and definitization of contract change orders. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 14629 on March 23, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### **B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, clarifies, and streamlines DFARS text, but makes no significant change to DoD contracting policy.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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.*

**List of Subjects in 48 CFR Part 243**

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 243 is amended as follows:

**PART 243—CONTRACT MODIFICATIONS**

■ 1. The authority citation for 48 CFR part 243 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**243.102, 243.105, and 243.107 [Removed]**

■ 2. Sections 243.102, 243.105, and 243.107 are removed.

■ 3. Section 243.107–70 is amended by revising the second sentence to read as follows:

**243.107–70 Notification of substantial impact on employment.**

\* \* \* The clause prescribed at 249.7003(c) requires that the contractor notify its employees, its subcontractors, and State and local officials when a contract modification will have a substantial impact on employment.

■ 4. Sections 243.170 and 243.171 are revised to read as follows:

**243.170 Identification of foreign military sale (FMS) requirements.**

Follow the procedures at PGI 243.170 for identifying contract modifications that add FMS requirements.

**243.171 Obligation or deobligation of funds.**

Follow the procedures at PGI 243.171 when obligating or deobligating funds.

■ 5. Section 243.204 is revised to read as follows:

**243.204 Administration.**

Follow the procedures at PGI 243.204 for review and definitization of change orders.

■ 6. Section 243.204–70 is amended by revising paragraph (b) to read as follows:

**243.204–70 Certification of requests for equitable adjustment.**

\* \* \* \* \*

(b) To determine if the dollar threshold for requiring certification is met, add together the absolute value of each cost increase and each cost decrease. See PGI 243.204–70(b) for an example.

\* \* \* \* \*

**243.204–71 [Removed]**

■ 7. Section 243.204–71 is removed.

[FR Doc. 05–22104 Filed 11–8–05; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF DEFENSE****48 CFR Parts 244 and 252**

[DFARS Case 2003–D025]

**Defense Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to subcontracts awarded under DoD contracts. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2003–D025.

**SUPPLEMENTARY INFORMATION:****A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule:

- Revises DFARS 244.301 to clarify Government responsibilities for conducting reviews of contractor purchasing systems.

- Deletes text at DFARS 244.304 containing examples of weaknesses in a contractor's purchasing system that may indicate the need for a review. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI),

available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Updates the clause at DFARS 252.244–7000 to reflect the current title of the clause at FAR 52.244–6, Subcontracts for Commercial Items.

DoD published a proposed rule at 70 FR 19044 on April 12, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, clarifies, and streamlines DFARS text, but makes no significant change to DoD contracting policy.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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.*

**List of Subjects in 48 CFR Parts 244 and 252**

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 244 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 244 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 244—SUBCONTRACTING POLICIES AND PROCEDURES**

■ 2. Section 244.301 is revised to read as follows:

**244.301 Objective.**

The administrative contracting officer (ACO) is solely responsible for initiating reviews of the contractor's purchasing systems, but other organizations may request that the ACO initiate such reviews.

■ 3. Section 244.304 is revised to read as follows:

**244.304 Surveillance.**

(b) The ACO, or the purchasing system analyst (PSA) with the

concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor's purchasing system. See PGI 244.304(b) for examples of weaknesses.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.244–7000 [Amended]

■ 4. Section 252.244–7000 is amended as follows:

■ a. By revising the clause date to read “(NOV 2005)”; and

■ b. In the introductory text of the clause by removing the phrase “and Commercial Components”.

[FR Doc. 05–22105 Filed 11–8–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 250

[DFARS Case 2003–D048]

### Defense Federal Acquisition Regulation Supplement; Extraordinary Contractual Actions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the processing of requests for extraordinary contract adjustments. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2003–D048.

### SUPPLEMENTARY INFORMATION:

#### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures

that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Updates requirements for DoD processing of requests for extraordinary contract adjustments; and

- Deletes procedures for preparation of records and submittal of requests to a contract adjustment board. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 6393 on February 7, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates primarily to DoD internal administrative procedures for the processing of requests for extraordinary contract adjustments.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

#### List of Subjects in 48 CFR Part 250

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 250 is amended as follows:

### PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

■ 1. The authority citation for 48 CFR Part 250 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 250.105 is revised to read as follows:

### 250.105 Records.

Follow the procedures at PGI 250.105 for preparation of records.

■ 3. Section 250.201–70 is amended by revising paragraph (a) and the last sentence of paragraph (b) introductory text to read as follows:

### 250.201–70 Delegations.

(a) *Military Departments.* The Departments of the Army, Navy, and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements or agency acquisition guidance.

(b) \* \* \* The agency supplements or agency acquisition guidance shall specify the delegations and levels of authority.

\* \* \* \* \*

■ 4. Subpart 250.3 is revised to read as follows:

### Subpart 250.3—Contract Adjustments

Sec.

250.303–1 Contractor requests.

250.305 Processing cases.

250.306 Disposition.

### 250.303–1 Contractor requests.

Requests should be filed with the procuring contracting officer (PCO). However, if filing with the PCO is impractical, requests may be filed with an authorized representative, an administrative contracting officer, or the Office of General Counsel of the applicable department or agency, for forwarding to the cognizant PCO.

### 250.305 Processing cases.

(1) At the time the request is filed, the activity shall prepare the record described at PGI 250.105(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

(2) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, the documentation described at PGI 250.305.

(3) Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.306. The memorandum of decision shall not contain any information classified “Confidential” or higher. The board’s decision will be sent to the appropriate official for implementation.

**250.306 Disposition.**

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.306.

[FR Doc. 05-22106 Filed 11-8-05; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF DEFENSE****48 CFR Part 252****Defense Federal Acquisition Regulation Supplement; Technical Amendment**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement to update the Internet address for obtaining a list of processes accepted under the DoD Single Process Initiative (SPI).

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 252 is amended as follows:

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 252.211-7005 is amended by revising the clause date and the second sentence of paragraph (b) to read as follows:

**252.211-7005 Substitutions for Military or Federal Specifications and Standards.**

\* \* \* \* \*

**SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (NOV 2005)**

\* \* \* \* \*

(b) \* \* \* A listing of SPI processes accepted at specific facilities is available via the Internet at <http://>

[guidebook.dcmamail/20/guidebook\\_process.htm](http://guidebook.dcmamail/20/guidebook_process.htm) (paragraph 4.2).

\* \* \* \* \*

[FR Doc. 05-22112 Filed 11-8-05; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AT78

**Endangered and Threatened Wildlife and Plants; Final Determination Concerning Critical Habitat for the San Miguel Island Fox, Santa Rosa Island Fox, Santa Cruz Island Fox, and Santa Catalina Island Fox**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The San Miguel Island fox (*Urocyon littoralis littoralis*), Santa Rosa Island fox (*U. l. santarosae*), Santa Cruz Island fox (*U. l. santacruzae*), and Santa Catalina Island fox (*U. l. catalinae*) were listed as endangered under the Endangered Species Act of 1973, as amended (Act), on March 5, 2004. We, the U.S. Fish and Wildlife Service, do not find any habitat on the four islands occupied by the foxes that meets the definition of critical habitat under the Act. Because there is no habitat that meets the definition of critical habitat for these island fox subspecies, there is none to designate; therefore, we are not designating any critical habitat.

**DATES:** This rule becomes effective on December 9, 2005.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

**FOR FURTHER INFORMATION CONTACT:** For the San Miguel Island fox, Santa Rosa Island fox, and Santa Cruz Island fox, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, at the above address, (telephone 805/644-1766; facsimile 805/644-3958). For the Santa Catalina Island fox, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA (telephone 760/431-9440; facsimile 760/431-9624).

**SUPPLEMENTARY INFORMATION:**

**Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on the four island fox subspecies, refer to the March 5, 2004, final listing rule (69 FR 10335) and the October 7, 2004, proposed critical habitat rule (69 FR 60134).

**Previous Federal Actions**

For information on previous Federal actions concerning the four island fox subspecies, refer to the proposed critical habitat rule (69 FR 60134; October 7, 2004).

**Summary of Comments and Recommendations**

We requested written comments from the public on the proposed designation of critical habitat for four island fox subspecies in the proposed rule (69 FR 60134; October 7, 2004). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

During the comment period that opened on October 7, 2004 and closed on December 6, 2004, we received three comments directly addressing the proposed critical habitat designation: two from peer reviewers and one from a member of the public. The State of California, where the islands on which these subspecies live are located, did not provide comments. The two peer reviewers who commented generally supported our proposal to not designate critical habitat for the island fox subspecies, although one thought additional research was needed. The other commenter opposed our proposal. Comments received are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from two of the peer reviewers. One of the peer reviewers agreed with our conclusion in the proposed rule that designating critical habitat would not confer additional benefits to the conservation of the four island fox subspecies. This peer reviewer's extensive experience with the three

northern island fox subspecies lead him to believe that there is little habitat preferences among island foxes, although the foxes may use some habitats more than others. The other peer reviewer generally agreed with our proposal but suggested that, with additional study, one habitat type might be established as critical habitat for island fox subspecies (refer to Peer Review Comments below for additional details).

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the four island fox subspecies, and we address them in the following summary.

#### *Peer Reviewer Comments*

(1) *Comment:* A peer reviewer familiar with the three northernmost island fox subspecies agreed with the Service's proposal to not designate critical habitat for those three island fox subspecies because: (1) Island foxes use many, if not all, of the habitats available to them on the northern Channel Islands; (2) habitat types on these three islands are in many cases less discrete than elsewhere, and designation of discrete critical habitat would be difficult; and (3) island fox habitat on the northern Channel Islands is already protected by the land management policies of the landowners, the National Park Service (NPS), and The Nature Conservancy (TNC). The experience of this peer reviewer with the three listed subspecies on the northern Channel Islands indicates that there is little habitat preference among island foxes and that habitat types on these islands are not discrete enough to facilitate designation and demarcation of habitat boundaries. The peer reviewer did not speak to the Santa Catalina Island subspecies because he does not have expertise with that island.

The second peer reviewer agreed that the four subspecies of island fox are habitat generalists that utilize a wide variety of habitats, including coastal dune, grassland, and oak and pine woodland. However, his research results indicate at least a few habitats are used somewhat more by island foxes while others are used somewhat less. This reviewer's research indicated that native, perennial grasslands are used by island foxes more than exotic, annual grasslands and that, with additional research, native, perennial grasslands could possibly be viewed as a primary constituent element (PCE) for the foxes. The reviewer is further concerned that exotic, annual grasslands have replaced native, perennial grasslands in several areas on the islands. The reviewer

suggested that the Service could resolve the question of the importance of perennial grasslands by: (1) Evaluating the significance of perennial grassland habitat to island fox foraging ecology and demography (the peer reviewer notes that an experimental approach to this evaluation would be the most beneficial); (2) quantifying the historic and current distribution of both native perennial grasslands and exotic, annual grasslands, and assessing the potential for habitat conversion from native, perennial grasslands to exotic, annual grasslands; and (3) if native, perennial grasslands were shown to be important to foxes, identifying alternative management actions that would provide for the conservation of this native habitat.

*Our Response:* As noted by both peer reviewers, island foxes are habitat generalists and use all the habitats available on the islands. One reviewer pointed out that, in some situations, island foxes use native, perennial grasslands more than exotic, annual grasslands. However, the fact that island foxes may use native, perennial grasslands more than exotic, annual grasslands does not by itself signify that perennial grasslands contain the features essential to the conservation of the species. Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographical 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. The reviewer noted that, with additional research and experimentation, native, perennial grasslands may be determined to meet the definition of critical habitat. However, we must use the best available science available to us at this time to make our decision. If research results become available in the future and suggest that there are features essential to fox conservation that meet the definition of critical habitat, as appropriate, the Service will revisit this critical habitat determination.

#### *Comments Related to Policy Issues*

(2) *Comment:* A commenter challenged statements in the proposed rule that the designation of critical habitat is of little additional value for most listed species and stated that species with critical habitat are twice as likely to recover as species without designated critical habitat.

*Our Response:* We have not been able to independently verify commenter's claim that species with critical habitat

are twice as likely to recover as species without critical habitat. Of the 14 species delisted or proposed for delisting under the Act, only 3 had designated critical habitat. We believe that, in most cases, cooperative conservation through voluntary measures, our grant programs, and the recovery planning process along with regulatory measures such as section 7 consultations, the section 9 protective prohibitions of unauthorized take, and the section 10 incidental take permit process provide greater incentives and conservation benefits than does the designation of critical habitat.

(3) *Comment:* A commenter challenged statements in the proposed rule that critical habitat designations, and litigation to compel the Service to make them, consumes a significant amount of the agency's resources and is unduly burdensome for that reason.

*Our Response:* Through two administrations, the FWS has provided information and testimony regarding the relatively few benefits provided by critical habitat. Nevertheless, we have also proceeded with designation of such habitat. In the case of the island fox, we are not designating any critical habitat because there is no habitat that meets the definition. As a result, the relative worth of a designation is not an issue.

#### *Comments Related to the Proposal To Not Designate Any Critical Habitat*

(4) *Comment:* A commenter stated that, in the final listing rule for the island foxes (69 FR 10335; March 5, 2004), the Service found that designation of critical habitat is prudent for the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina island fox subspecies. However, in the proposed critical habitat rule (69 FR 60134; October 7, 2004), the Service concluded that there is no habitat that meets the definition of critical habitat. The Service has not provided an adequate or rational justification for why it has reversed its position.

*Our Response:* Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. Although we determined in the March 5, 2004, final listing rule



that designation of critical habitat was prudent for the island foxes, in the proposed critical habitat rule, we found there is no habitat on the four islands occupied by the foxes that meets the definition of critical habitat under the Act. Critical habitat is defined under the Act as “specific areas 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.” We have found no areas on the four islands occupied by island foxes that contain the physical or biological features essential to the species’ conservation and that may require special management. Accordingly, we have determined to designate no critical habitat for the four island fox subspecies. Also, there are no specific areas outside the geographical area occupied by the species at the time they were listed that are essential for the conservation of the species. As noted by the two peer reviewers who commented on the proposed critical habitat rule, the four subspecies of island foxes are habitat generalists that use all habitats available on the islands. Accordingly, we cannot conclude that any specific areas are essential to the conservation of the foxes, and thus, there are no areas that meet the definition of critical habitat. For further discussion, see the Critical Habitat section of this document. Accordingly, we have not reversed our position. We in the past made a general finding that designation of critical habitat would be prudent, in accordance with the statutory and regulatory standards for making that finding. However, when we examined the issue more closely, preparing to making an actual proposal, we found no habitat that met the statutory and regulatory standards for designation as critical habitat. These are unrelated issues.

(5) *Comment:* A commenter stated that it cannot reasonably be disputed that the foxes need some habitat to survive and recover. If all of the islands can effectively be used by the foxes (assuming all populations recover to the point where they can exist in the wild), then all of the four islands, which constitute the entirety of the foxes’ extremely limited range, should be designated as critical habitat.

*Our Response:* The Act defines critical habitat in part as “specific areas on which are found those physical or biological features (i) essential to the

conservation of the species.” We agree with the commenter that the island foxes require habitat in order to be recovered and that the foxes are able to use the habitat in existence on each of the four islands. However, critical habitat does not require nor demand the designation of a species’ entire range; in fact, Congress has expressly cautioned us against that. Here, we have determined that the island foxes do not require specific types of habitats, but rather are habitat generalists. As such, we are unable to identify any physical or biological features essential to the four island fox subspecies’ conservation that may require special management, and thus have found no habitat that meets the Act’s definition of critical habitat.

(6) *Comment:* The commenter stated the Service’s contention that there are no current or anticipated threats to the island habitat (69 FR 60135) is disingenuous because in the final listing rule for the four subspecies of island fox, the Service stated that over the last 150 years, habitat on all the islands where the island fox occurs has been affected by livestock grazing, cultivation, and other disturbances.

*Our Response:* Although many, if not all, the habitats used by island foxes on the three northern Channel Islands (San Miguel, Santa Rosa, and Santa Cruz Island) have been altered, the island foxes thrived in these altered habitats prior to the dramatic declines that led to their endangered status. These declines were not the result of threats to any of the habitats used by the four subspecies, but rather were due to predation and disease. It wasn’t until golden eagles (*Aquila chrysaetos*) became established on the islands that island fox numbers declined dramatically. Even if all the habitats on these islands were restored to a pristine condition, the island foxes cannot recover to their previous abundance until predation by golden eagles is eliminated or reduced dramatically. Similarly, the population of Santa Catalina Island fox did not decline until a severe outbreak of canine distemper occurred. For all four subspecies, habitat does not appear to be a factor limiting the current population growth rate, nor is it likely to limit future population growth.

#### Summary of Changes From Proposed Rule

In developing the final designation of critical habitat for the four subspecies of island fox, we reviewed public comments received on the proposed designation of critical habitat (69 FR 60134; October 7, 2004) and

incorporated these comments as appropriate in this final rule. We also updated the numbers of island foxes in captivity and in the wild where appropriate. We are not aware of any new, significant, biological or management information for the four subspecies that would make us reconsider the provisions of our proposed rule. While we have made no major changes to the rule, we have made a minor administrative change: Instead of adding text pertaining to the four subspecies of island fox to 50 CFR 17.97 as proposed, we are adding text to 50 CFR 17.95.

#### Background

Since the proposed critical habitat was published (October 7, 2004; 69 FR 60134), there have been additional releases of island foxes on both Santa Rosa Island and San Miguel Island; several foxes have been killed by golden eagles on Santa Rosa Island. Currently, on Santa Rosa Island there are at least 14 foxes in the wild and 50 foxes in captivity. On San Miguel Island, there are at least 10 foxes in the wild and 48 in captivity. Wild foxes on both islands are successfully reproducing (Tim Coonan, NPS, pers. comm. 2005).

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographical 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.

In the March 5, 2004, final listing rule, we determined that designation of critical habitat was prudent for the island foxes. As discussed more fully below, we now find that there are no “specific areas 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.” Further, there are no “specific areas outside the geographical area occupied by [the] species at the time it [was] listed that are essential for the conservation of the species.”

In accordance with section 4(b)(2) of the Act, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available. The Act defines critical habitat as “the specific areas within the geographic area occupied by the species \* \* \* on which are found those physical or biological features (i) essential to the conservation of the species \* \* \*.” According to the regulations at 50 CFR 424.12, these features include, but are not limited to: Space for individual and population growth and for normal behavior; nutritional or physiological requirements, such as food, water, air, light, or minerals; 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 distribution of a species.

The island fox, however, is a habitat generalist in all aspects of its life history. It does not require particular habitats for food, cover, breeding, and denning sites. The foxes are opportunistic omnivores, eating a wide variety of plants (e.g., grass, fruits, and berries) and animals (e.g., insects, birds, and mice) in whatever habitat they use (69 FR 10336). As such, the foxes use all habitat available on each of the islands, including riparian, oak woodland, pine woodland, chaparral, coastal sage scrub, maritime scrub, and grasslands. In general, some of these habitats contain cover from aerial predation, however, the nature of the cover is not habitat specific. Island fox reproduction is also not limited to a specific habitat, as they are known to locate their simple den sites in any habitat where they find natural shelter (e.g., brush pile, rock crevice, hollow stump, or log) (Laughlin 1977). The island foxes thrived in these islands prior to the dramatic declines that led to their endangered status. These declines were not the result of

threats to any of the habitats used by the four subspecies. It wasn't until golden eagles became established on the islands that island fox numbers declined dramatically on Santa Cruz, Santa Rosa, and San Miguel Islands. Similarly, the population of Santa Catalina Island fox did not decline until a severe outbreak of canine distemper occurred. We are not aware of any existing or anticipated threats to the island habitats that would likely affect island foxes. Accordingly, there is currently no information to support a conclusion that any specific habitat within these areas is essential. Therefore, we do not believe there are areas within the subspecies' habitat that contain specific features essential to the conservation of the island fox.

Adverse effects to the fox that have occurred on the Channel Islands have been a result of direct threats to individuals rather than to island fox habitat (e.g., disease (canine distemper) and predation from golden eagles). Although the habitat of island foxes on all islands has been subject to substantial human-induced changes over the past 150 years, these changes are unlikely to have directly caused the observed declines. These subspecies' precarious situations derive almost entirely from golden eagle predation and canine distemper rather than from any habitat degradation or loss. Furthermore, habitat does not appear to be a factor limiting the current population growth rate, nor is it likely to limit future population growth. We believe that island fox conservation depends on addressing threats not related to habitat.

As discussed above, declines have been caused largely by predation and disease. A critical habitat designation would provide no benefit/assistance in reducing the effects of predation and disease on individual foxes because the regulatory effects of critical habitat designations apply to adverse modification or destruction of habitat, rather than the particular effects that are causing mortality of individual foxes. Moreover, we note that the current threats, predation and disease, are being addressed by the conservation actions of the NPS, TNC, and Catalina Island Conservancy (CIC) on the islands.

At the time of listing (March 2004), there were no foxes in the wild on San Miguel Island (all San Miguel Island foxes were in captive breeding facilities located on San Miguel Island). However, since the time of listing, foxes have been released back into the wild on San Miguel Island. Additional foxes have also been released on Santa Rosa Island since the time of listing. We consider all of the islands to be occupied by island

foxes at the present time. Although we are not designating any critical habitat for any of the four subspecies, areas occupied by island foxes will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. The take prohibitions of section 9 (e.g., prohibitions against killing, harming, harassing, capturing foxes) also continue to apply.

In accordance with the Act, a critical habitat designation can include areas outside the species' range at the time of listing if we determine that these areas are essential to the conservation of the species. We have not found any areas unoccupied at the time of listing or outside of the current range of the four island subspecies to be essential for their conservation.

In summary, we do not find any habitat on the subject islands that meets the definition of critical habitat in section 3(5)(A) of the Act. Because there is no habitat that meets the definition of critical habitat for the four island fox subspecies, there is none to designate, and we are not designating any critical habitat for any of the four subspecies.

## Required Determinations

### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. This rule does not designate any areas as critical habitat, and therefore, we did not prepare an economic analysis.

### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Because no critical habitat is being designated in this rule, there are no economic effects, and we did not prepare an economic analysis.

### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule does not designate critical habitat for the four island fox subspecies.

Therefore, no regulatory effects will derive from this action; it 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, and (b) we do not believe that this rule will significantly or uniquely affect small governments. Because we are not designating any areas of critical habitat, this rule will result in no regulatory impact on any entities.

*Takings*

This rule does not pose significant takings implications.

*Federalism*

We are not designating critical habitat in this final rule, and therefore this final rule does not have significant federalism effects. A federalism assessment is not required.

*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.

*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*

We are not proposing to designate any areas as critical habitat. It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. 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)).

*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 Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We are not designating any areas as critical habitat. No tribal lands are essential for the conservation of the San Miguel Island fox, Santa Rosa Island fox, Santa Cruz Island fox, or Santa Catalina Island fox.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES**).

**Author(s)**

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for "Fox, San Miguel Island," "Fox, Santa Catalina Island," "Fox, Santa Cruz Island," and "Fox, Santa Rosa Island" under "MAMMALS" in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Fox, San Miguel Island.	<i>Urocyon littoralis littoralis</i> .	U.S.A. (CA) .....	Entire .....	E	742	17.95(a)	NA
Fox, Santa Catalina Island.	<i>Urocyon littoralis catalinae</i> .	U.S.A. (CA) .....	Entire .....	E	742	17.95(a)	NA
Fox, Santa Cruz Island.	<i>Urocyon littoralis santacruzae</i> .	U.S.A. (CA) .....	Entire .....	E	742	17.95(a)	NA
Fox, Santa Rosa Island.	<i>Urocyon littoralis santarosae</i> .	U.S.A. (CA) .....	Entire .....	E	742	17.95(a)	NA
*	*	*	*	*	*	*	*

■ 3. In § 17.95, amend paragraph (a) by adding entries for San Miguel Island Fox, Santa Catalina Island Fox, Santa Cruz Island Fox, and Santa Rosa Island

Fox, in the same alphabetical order as these species occur in the table at § 17.11(h), to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**  
(a) *Mammals*.  
\* \* \* \* \*

**San Miguel Island Fox (*Urocyon littoralis littoralis*)**

We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for San Miguel Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

**Santa Catalina Island Fox (*Urocyon littoralis catalinae*)**

We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for Santa Catalina Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

**Santa Cruz Island Fox (*Urocyon littoralis santacruzae*)**

We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for Santa Cruz Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

**Santa Rosa Island Fox (*Urocyon littoralis santarosae*)**

We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for Santa Rosa Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

\* \* \* \* \*

Dated: November 1, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-22189 Filed 11-8-05; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[I.D. 102505B]

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

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

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit on previously designated restricted fishing days (RFD) that was published on June 7, 2005, should be adjusted. Certain General category RFDs are being waived to allow for maximum utilization of the coastwide General category BFT quota. Therefore, NMFS waives the RFDs in November and increases the daily

retention limit from zero to two large medium or giant BFT on the previously designated RFDs during the month of November 2005.

**DATES:** Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls (June 7, 2005; 70 FR 33033) established the following RFD schedule for the 2005 fishing year: All Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive, provided quota remained available and the fishery was open. RFDs are intended to extend the General category BFT fishery late into the season and provide for a winter fishery in the southern Atlantic region.

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Area	BFT Size Class Limit
Atlantic tunas General and HMS Charter/Headboat (while fishing commercially)	November 18-20, 2005, and November 24-27, 2005	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

**Adjustment of General Category Daily Retention Limits**

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. On September 28, 2005 (70 FR 56595), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit was supposed to be effective through January 31, 2005, inclusive, provided quota remained available and the fishery remained open.

Based on a review of dealer reports, daily landing trends, available quota,

weather conditions, and the availability of BFT on the fishing grounds, NMFS has determined that waiving RFDs and increasing the General category daily BFT retention limit on those RFDs previously established for the month of November, is warranted. Therefore, NMFS adjusts the General category daily BFT retention limits for November 18, 19, 20, 24, 25, 26, and 27, 2005, to two large medium or giant BFT per vessel. NMFS has selected these days in order to give adequate advance notice to fishery participants. While catch rates have continued to be low so far this season, NMFS recognizes that they may increase. In order to ensure equitable fishing opportunities in all areas and provide opportunities for a late winter General category BFT fishery, NMFS has not waived the RFDs scheduled in December and January at this time. If catch rates continue to be low, some or

all of the remaining previously scheduled RFDs may be waived as well.

The intent of this adjustment is to allow for maximum utilization of the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

**Monitoring and Reporting**

NMFS selected the RFDs being waived after examining current fishing year catch and effort rates, previous fishing years catch and effort rates, and analyzing the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports. Depending on the level of fishing effort

and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access the Internet at [www.nmfspermits.com](http://www.nmfspermits.com) for updates on quota monitoring and retention limit adjustments.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for, public comment on this action.

NMFS has recently become aware of increased availability of large medium and giant BFT on the fishing grounds. This increase in abundance provides the potential to increase General category landings rates if participants are authorized to harvest two large medium or giant BFT per day on previously

designated RFDs. The regulations implementing the 1999 Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on a review of the availability of BFT on the fishing grounds, dealer reports, daily landing trends, available quota, and weather conditions, NMFS has determined that this retention limit adjustment is warranted. Adjustment of retention limits is also necessary in order to avoid excessive quota rollovers from one fishing year to the next.

Delays in waiving the previously designated November RFDs, thereby increasing the General category daily retention limit, would be contrary to the public interest. Such delays would adversely affect those General category vessels that would otherwise have an opportunity to harvest BFT on a RFD and would further exacerbate the problem of low catch rates. Limited opportunities to access the General category quota may have negative social

and economic impacts to U.S. fishermen that depend on catching the available quota. For the General category, waiving of the November RFDs needs to be done as expeditiously as possible for the General category participants to be able to use the waived RFDs to take advantage of the adjusted retention limits and plan accordingly.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., waives a number of RFDs, thus increasing the opportunity to retain more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

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

Dated: November 3, 2005.

**Alan D. Risenhoover,**  
Acting Director, Office of Sustainable  
Fisheries, National Marine Fisheries Service.  
[FR Doc. 05-22363 Filed 11-8-05; 8:45 am]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 70, No. 216

Wednesday, November 9, 2005

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

## DEPARTMENT OF HOMELAND SECURITY

### Office of Inspector General

#### 6 CFR Part 5

[DHS-2005-0065]

### Privacy Act of 1974: Implementation of Exemptions

**AGENCY:** Office of Investigations, Office of Inspector General, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Office of Inspector General, Office of Investigations. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

**DATES:** Comments must be received on or before December 9, 2005.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2005-0065, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: (202) 254-4285 (This is not a toll-free number).

Mail: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

Hand Delivery / Courier: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

**Instructions:** All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

[www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Richard N. Reback, Department of Homeland Security, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528 by telephone (202) 254-4100 or facsimile (202) 254-4285; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 South 12th Street, Arlington, VA 22202-4220 by telephone (571) 227-3813 or facsimile (571) 227-4171.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 6, 2005, the Department of Homeland Security (DHS) updated and republished under the Privacy Act of 1974, 5 U.S.C. 552a, a system of records within Office of Inspector General (OIG), United States Department of Homeland Security (DHS) Headquarters for its investigative files. (See 70 FR 58448.) Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, sec. 1512, 116 Stat. 2310 (Nov. 25, 2002) (6 U.S.C. 552), DHS components and offices could continue to rely on completed administrative actions after creation of the Department until those actions were amended, modified, superseded, terminated, set aside, or revoked. Two system notices previously supported the collection of investigation information by the DHS OIG—FEMA/IG-1 (General Investigative Files) and Treasury/DO .190 (Investigation Data Management System). In its **Federal Register** notice of October 6, 2005, the DHS OIG updated and republished under its own nomenclature, the system notice to cover these records. The system is the DHS OIG “Investigations Data Management System” (IDMS). In this notice of proposed rulemaking, DHS now is proposing to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to its proposed Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government

collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a “system of records.” A “system of records” is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS OIG is claiming exemption from certain requirements of the Privacy Act for IDMS. Information in this system relates to official OIG investigations and law enforcement activities. These exemptions are needed to protect information relating to OIG investigations from disclosure to subjects of investigations and others who could interfere with OIG’s law enforcement activities. Specifically, the exemptions are required to preclude subjects of investigations from frustrating the investigative process; to avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure OIG’s ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In addition, because OIG investigations arise out of DHS programs and activities, information in this records system may pertain to national security and related law enforcement matters. In such cases, allowing access to such information could alert subjects of OIG investigations into actual or potential criminal, civil, or regulatory violations, and could reveal in an untimely manner, OIG's and other agencies' investigative interests in law enforcement efforts to preserve national security.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived.

#### List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

**Authority:** Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301.

Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. At the end of Appendix C to Part 5, which was proposed to be added at 70 FR 14428, March 22, 2005, add the following new paragraph “2” to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

\* \* \* \* \*

2. DHS–OIG–2005–002, the Office of Inspector General Investigations Data Management System (IDMS) consists of records and information collected and maintained to receive and process allegations of violations of criminal, civil, and administrative laws and regulations relating to DHS programs, operations, and employees, as well as contractors and other individuals and entities associated with the DHS. The system allows the DHS Office of Inspector General to monitor case assignments, disposition, status, and results; manage investigations and information provided during the course of such investigations; track actions taken by management regarding

misconduct; track legal actions taken following referrals to the United States Department of Justice for prosecution or litigation; provide information relating to any adverse action or other proceeding that may occur as a result of the findings of an investigation; retrieve investigation results; provide a system for creating and reporting statistical information; and to provide a system to track Office of Inspector General investigators' firearms qualification records and property records. Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation; and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be

continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject as to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude OIG special agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with OIG's ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

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

Dated: October 28, 2005.

**Maureen Cooney,**

*Acting Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 05-21952 Filed 11-8-05; 8:45 am]

BILLING CODE 4410-10-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 93

[Docket No. 05-041-1]

#### Importation of Cattle From Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. A new facility for the handling of animals is to be constructed on the Mexican side of the border at the port of San Luis, AZ, that will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required for such cattle under the regulations. We would also amend the regulations to remove provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas and that prohibit the movement of such cattle into areas of Texas quarantined because of fever ticks. The statutory requirement that limited the admission of those cattle to the State of Texas has been repealed, and we believe that the current provisions of our domestic fever tick quarantine regulations will effectively address any risk of the spread of tick-borne diseases associated with the subsequent movement of imported cattle from the quarantined area of Texas. These proposed changes would make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

**DATES:** We will consider all comments that we receive on or before January 9, 2006.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box,

select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0101 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05-041-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 05-041-1.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, Technical Trade Services Team, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-8364.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435, referred to below as the regulations) governs the importation of ruminants; within subpart D, §§ 93.424 through 93.429 specifically address the importation of various ruminants from Mexico into the United States.

In § 93.426, paragraph (a) states that all ruminants offered for entry into the United States from Mexico must be inspected at the port of entry and found to be free from communicable diseases and fever tick infestation and to not have been exposed to communicable diseases and fever tick infestation. Ruminants found to be affected with or

to have been exposed to a communicable disease, or infested with fever ticks, are to be refused entry except as provided in § 93.427(b)(2).

Under § 93.427(b)(2), cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the State of Texas, except that portion of the State quarantined because of fever ticks, either at one of the land border ports in Texas listed in § 93.403(c) of the regulations, or at the port of Santa Teresa, NM, provided that certain conditions are met. Those conditions are spelled out in paragraphs (b)(2)(i) through (b)(2)(v) of § 93.427.

In this document, we are proposing to amend § 93.427(b)(2) by:

- Removing the limitation that allows the imported cattle admission only into the State of Texas;
- Removing the limitation that prohibits the imported cattle from being moved into areas in Texas quarantined because of fever ticks; and
- Adding San Luis, AZ, as an additional port through which the cattle may be imported into the United States.

Each of these proposed changes is explained in more detail below.

#### Admission Only Into the State of Texas

The limitation that allows the imported cattle admission only into the State of Texas originated in statutory language (21 U.S.C. 104) that, prior to 1993, authorized the Secretary of Agriculture to permit "the admission into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom." However, in 1993, as part of the North American Free Trade Agreement (NAFTA) Implementation Act (Public Law 103-182), 21 U.S.C. 104 was amended to state more generally that the Secretary may permit the importation of cattle, sheep, or other ruminants, and swine from Canada and Mexico, effectively removing the restriction that prohibited cattle from moving into States other than Texas. The provisions of 21 U.S.C. 104 were subsequently repealed by the Animal Health Protection Act, which constitutes the Secretary's current authority and places no restrictions on the destination within the United States of cattle imported from Mexico.

Following the passage of the NAFTA Implementation Act, our permitting procedures were modified to allow cattle that had been infested with or exposed to fever ticks to be moved into States other than Texas under the conditions described in § 93.427(b)(2), but we did not make a corresponding



change in the regulations to reflect the removal of the statutory restriction. We are, therefore, proposing to make that change in this document. Given that cattle from Mexico that have been exposed to splenetic, southern, or tick fever or that have been infested with or exposed to fever ticks must meet the conditions listed in § 93.427(b)(2)(i) through (b)(2)(v) before entering the United States, the likelihood of these cattle introducing splenetic, southern, or tick fever into the U.S. cattle population is very low. Thus, we do not believe it is necessary to maintain the restriction in § 93.427(b) that limits the admission of those cattle to the State of Texas.

#### *Quarantined Areas in Texas*

Second, § 93.427 currently provides that cattle from Mexico may be imported into the State of Texas except into areas quarantined because of disease or tick infestation. These quarantined areas are listed in § 72.5. Once cattle enter the quarantined area, certain requirements must be met in order for the cattle to leave the quarantined area. If a quarantined area is not participating in a tick eradication program, the cattle must meet the conditions in § 72.6, while if a quarantined area is conducting tick eradication, the cattle must meet the conditions in § 72.7. These regulations require either inspection for ticks and certification or dipping and certification, which ensures that cattle moving from quarantined areas do not carry ticks that can transmit cattle fever. Because any cattle from Mexico that entered the quarantined area would have to meet the same conditions before leaving the quarantined area, we are proposing to remove the additional movement restriction and to allow cattle from Mexico to enter Texas' tick quarantine zone.

#### *Addition of San Luis, AZ, as an Approved Port*

The port of San Luis, AZ, is currently listed in § 93.403(c) among the land border ports designated as having the necessary inspection facilities for the entry of ruminants from Mexico. However, as noted previously, the regulations in § 93.427(b) provide that any cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported only through one of the border ports in Texas listed in § 93.403(c) or through the port of Santa Teresa, NM. We are proposing to amend § 93.427(b) to add San Luis, AZ, as a port through which such cattle may be imported.

A new commercial port of entry is to be constructed in San Luis, AZ, approximately 5 miles to the east of the current border crossing; the current crossing will be improved as well and will continue to be used for noncommercial crossings (passenger vehicles and pedestrians). The purpose of the project is to provide more direct access to major transportation routes between the United States and Mexico and to provide higher levels of service to users of the port of entry. As part of this project, the Mexican Government intends to construct facilities to make the movement of cattle from Mexico into the United States less logistically challenging for both exporters and importers.

Based on the information provided to us by the Mexican Government, the new cattle-handling facilities will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required under the regulations for cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases. We will coordinate, as necessary, with the Mexican Government during the construction of the new port facilities and will inspect the new cattle-handling facilities upon their completion to confirm that they are properly equipped to allow for the necessary chute inspection, dipping, and testing of cattle. Any final action on this proposal to add San Luis, AZ, to the list in § 93.427(b) of ports through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported from Mexico will be contingent upon our determination that the necessary facilities are in place.

#### *Executive Order 12866 and Regulatory Flexibility Act*

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

This proposed rule would amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States and would remove provisions that (1) limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas and (2) prohibit the movement of such cattle into areas of Texas quarantined

because of fever ticks. These proposed changes would make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

The proposed changes in the regulations would benefit certain cattle operations in the United States by facilitating the importation of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases, mainly by reducing transport costs from the port of entry. At present, such cattle may enter the United States only at ports located in Texas and New Mexico. The proposed port of entry for these cattle at San Luis, AZ, would benefit cattle operations to the west of the current ports of entry; transport costs would be lower since the cattle would be moved over shorter distances.

Cattle from Mexico are usually purchased by stocker operations that graze the animals before they are shipped to feedlots. We do not know the number or size distribution of stocker operations (neither overall, nor for the subset of operations that may use the port at San Luis, AZ). According to the 2002 Census of Agriculture, it is reasonable to assume that most are small entities. This assumption is based on aggregate data for all beef producers in the United States. In 2002, there were 664,431 U.S. farms primarily engaged in raising beef cattle (North American Industrial Classification System [NAICS] code 112111, Beef Cattle Ranching and Farming). Of the 664,431 farms, 659,009 (99 percent) had annual receipts that year of less than \$500,000. The Small Business Administration's small entity threshold for farms classified within NAICS code 112111 is annual receipts of not more than \$750,000.

APHIS does not have information on the number of entities that may choose to import infested or exposed cattle using the San Luis, AZ, facilities, nor the cost savings that would be realized. We welcome information that the public may offer that would allow the Agency to better determine the number of enterprises that would be affected and the probable magnitude of their cost savings.

APHIS does not expect the proposed changes would result in a net increase in the number of cattle imported from Mexico. According to the chairman of the Greater Yuma Port Authority (San Luis, AZ), the average number of cattle from Mexico crossing at San Luis, AZ, over the past few years has been approximately 30,000 annually. With the addition of San Luis, AZ, as an

approved port for the importation of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases, 30,000 to 50,000 head of such cattle could potentially enter the United States through San Luis; these animals would most likely be animals that otherwise would enter through the existing approved ports in Texas and New Mexico. Any positive impacts of the proposed rule for small entities in the San Luis, AZ, area, such as an increased volume of business for firms that transport cattle, would be matched by business declines for firms operating from the Texas and New Mexico ports. There may also be positive effects at the Texas and New Mexico ports to the extent that the diversion of cattle to San Luis, AZ, would reduce operational delays when the demand for imports is beyond the capacity of the facilities; however, APHIS has no information on whether such periods of insufficient capacity have occurred, and if so, how frequently.

There are no significant alternatives to the proposed rule. The Mexican Government has requested that a port be established on the Mexico-Arizona border for the entry into the United States of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases. APHIS has determined that with the construction of new facilities at the port of San Luis, AZ, this request can be satisfied.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### *Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### *Paperwork Reduction Act*

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 9 CFR Part 93**

Animal diseases, Imports, Livestock, Poultry and poultry products,

Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

#### **PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS**

1. The authority citation for part 93 would continue to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.427, the introductory text of paragraph (b)(2) would be revised to read as follows:

#### **§ 93.427 Cattle from Mexico.**

\* \* \* \* \*

(b) \* \* \*

(2) Cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico at one of the land border ports in Texas listed in § 93.403(c) or at the ports of Santa Teresa, NM, or San Luis, AZ, provided that the following conditions are strictly observed and complied with:

\* \* \* \* \*

Done in Washington, DC, this 3rd day of November 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05–22337 Filed 11–8–05; 8:45 am]

**BILLING CODE 3410–34–P**

#### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. 2003–NM–271–AD]**

**RIN 2120–AA64**

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes**

**AGENCY:** Federal Aviation Administration, Department of Transportation (DOT).

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 series airplanes, that would have required inspecting the pilot's and co-pilot's seat tracks for proper locking of the seats, and adjusting or replacing the seat tracks, if necessary. This new action revises the proposed rule by revising the applicability statement, and requiring replacement of the seat locking pin on certain SICMA-brand seats. The actions specified by this new proposed AD are intended to prevent uncommanded movement of the pilot's or co-pilot's seat, which could interfere with the operation of the airplane and consequent temporary loss of airplane control. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 5, 2005.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2003–NM–271–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### **FOR FURTHER INFORMATION CONTACT:**

Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

#### **SUPPLEMENTARY INFORMATION:**

#### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such

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

Submit comments using the following format:

- Organize comments issue-by-issue.

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

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-271-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-271-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and EMB-145 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on June 18, 2004 (69 FR 34091). That NPRM would have required inspecting the pilot's and co-pilot's seat tracks for proper locking of the seats, and adjusting or replacing the seat tracks, if necessary. That NPRM was prompted by a number of cases

reported where flight crews had difficulty fitting the lock pin into the track of their seats during seat adjustments due to damage in the seat track locking hole. That condition, if not corrected, could result in uncommanded movement of the pilot's or co-pilot's seat, which could result in interference with the operation of the airplane and consequent temporary loss of airplane control.

#### Actions Since Issuance of Previous Proposal

Since the issuance of the original NPRM, the Departamento de Aviacao Civil (DAC) has issued a revision of Brazilian airworthiness directive 2002-09-01. That revision (2002-09-01R1, effective June 2, 2004) added a modification of certain SICMA seats installed on Model EMB-135 airplanes and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. The modification replaces certain seat locking pins with new, improved seat locking pins.

We have also learned that the seat locking pin was designed with an incorrect shape. The use of the incorrectly shaped locking pin can cause damage to the seat track locking holes, and is the main factor that results in the uncommanded movement.

#### Comments on Original NPRM

We provided the public the opportunity to participate in the development of this proposed AD. We have considered the comments that have been submitted on the original NPRM. Due consideration has been given to the comments received in response to the NPRM.

#### Request To Allow Previous Revisions of Service Bulletins

One commenter requests that prior revisions levels of EMBRAER Service Bulletin 145-53-0027 be included in the proposed AD. The commenter has accomplished portions of inspections in accordance with service bulletin 145-53-0027, dated May 31, 2001; and Change 01, dated March 12, 2002.

Another commenter, the manufacturer, suggests that we change the proposed AD to include a paragraph allowing actions performed in accordance with previous issues of SICMA Service Bulletin 147-25-020, Issue 2, dated December 22, 2003.

We agree with the commenters' requests. We have revised paragraphs (e) and (f) of this supplemental NPRM (paragraph (e) of the original NPRM) to allow previous actions that were performed before the effective date of the proposed AD in accordance with

earlier revisions of the service information.

#### Request To Shorten the Compliance Time

One commenter suggests that the 500-flight-hour inspection interval of the seat tracks is too long. The commenter feels that further degradation of the seat tracks within that inspection interval may result in a failure prior to the next inspection. Also, due to the severity of the loss of control in the event of an uncommanded movement of the pilot's seat, the commenter suggests that a "much shorter inspection interval be required."

We do not agree with the commenter's request to shorten the compliance time. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modifications. Further, we arrived at the proposed compliance time with DAC concurrence. In addition, we added paragraph (b) to the supplemental NPRM to require replacement of existing seat locking pins with new, improved seat locking pins, which addresses the major cause of the degradation of the seat tracks.

#### Request To Revise Unsafe Condition

One commenter, the airplane manufacturer, states that the unsafe condition statement does not fully address the cause of the misaligned and excessively worn seat tracks. The condition of the seat tracks contribute to uncommanded seat movements, but the main reason for the condition of the seat tracks is because the locking pin was designed with the wrong shape. The commenter also asserts that the issuance of the SICMA Service Bulletin 147-25-020, Issue 2, dated December 22, 2003, which addresses the locking pin, is the reason why the DAC issued the revised Brazilian airworthiness directive 2002-09-01R1, effective June 2, 2004. We infer that the commenter is requesting that the unsafe condition statement be revised to include the origins of the damage to the seat tracks.

We agree with the commenter that further information on the origins of the unsafe condition should be included in the supplemental NPRM. We have added a statement addressing the origin of the seat track damage under "Actions Since Issuance of Previous Proposal" above to supplement the Discussion section of the original NPRM.

### Request To Revise Applicability Statement of the Proposed AD

The commenter requests that the applicability statement of the original NPRM be revised to apply to certain SICMA seats having part number (P/Ns) 1471610-00 through 1471610-03 inclusive, and P/N 1471611-00 through 1471611-03 inclusive, "installed on Model EMB-135 and -145 series airplanes."

We agree with the commenter that the applicability statement needs to be revised. However, while the faulty locking pin was installed only on those seats with P/Ns stated above, the seats are rotatable and could be installed on any Model EMB-135 airplanes and EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. We find that the suggested applicability could inadvertently exclude airplanes that may have seat track damage from a previous installation of an affected SICMA seat part number, but do not have an affected SICMA seat installed as of the effective date of the proposed AD.

We have concluded that the applicability statement must affect all Model EMB-135 airplanes and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. This applicability matches the applicability of the revised Brazilian airworthiness directive. Affecting all Model EMB-135 airplanes and EMB-

145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes also allows us to prohibit installation of a SICMA seat with a faulty locking pin on any Model EMB-135 airplanes or Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes (unless modified as required) in paragraph (c) of this supplemental NPRM, and require certain airplanes to be inspected for any seat track damage.

### Request To Require Seat Track Inspections

The commenter also requests that we revise the original NPRM to require, for airplanes with serial number (S/N) 145002 through 145560, an inspection of the seat tracks in accordance with the EMBRAER Service Bulletin 145-53-0027, Revision 03, dated February 5, 2004, as a concurrent service bulletin action to replace the seat locking pin on certain seats with affected P/Ns.

We agree with specifying the airplane serial numbers, as called out by the commenter, in paragraph (a)(3) of the supplemental NPRM. The revision would simplify the paragraph without excluding airplanes that may have a damaged seat track. This difference has been coordinated with the DAC.

### Request To Require Seat Locking Pin Replacement

In addition, the commenter requests that we revise the original NPRM to

require replacement of seat locking pins on all SICMA seats having part number (P/N) 1471610-00 through 1471610-03 inclusive, and P/N 1471611-00 through 1471611-03 inclusive, installed on Model EMB-135 airplanes and EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes.

We agree with the commenter that the faulty seat locking pins need to be replaced with new pins. We have added paragraph (b) to the supplemental NPRM.

### Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

### Explanation of Change to Applicability

We have revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

### Cost Impact

The FAA estimates that 550 airplanes of U.S. registry would be affected by this supplemental NPRM. The following table shows the estimated cost impact for airplanes affected by this supplemental NPRM. The average labor rate is \$65 per work hour.

Action	Number of airplanes affected	Work hours	Parts cost	Total cost
Inspection to determine seat part and serial numbers	550	1	(none)	\$35,750, or \$65 per airplane.
Inspection (Part I of EMBRAER SB 145-53-0027, Revision 03, February 5, 2004).	459	4	(none)	\$119,340, or \$260 per airplane.
Inspection and Alignment (Part III of EMRAER SB145-53-0027, Revision 03, February 5, 2004).	348	4	(none)	\$90,480, or \$260 per airplane.
Locking Pin and Spring Replacement (SICMA Aero Seat SB 147-25-020, Issue 2, December 22, 2003).	459	1	\$684	\$343,791, or \$749 per airplane.

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

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket 2003–NM–271–AD. *Applicability:* All Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the pilot's or copilot's seat, which could interfere with the operation of the airplane and consequent temporary loss of airplane control, accomplish the following:

#### Initial Inspection and Corrective Action

(a) Within 500 flight hours after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3), as applicable.

(1) For all airplanes: Do an inspection of the pilot's and co-pilot's seats for part numbers (P/N) and serial numbers (S/N). A review of airplane maintenance records is acceptable in lieu of this inspection if the P/N and S/N of the seats can be conclusively determined from that review.

(i) If any seat is found to have P/N 1471610–00 or 1471611–00, and the S/N is 000 through 324 inclusive, before further flight, do general visual and detailed inspection of the seat tracks for proper locking of the seats, and do all applicable related investigative actions and corrective actions, in accordance with Parts I and II, as applicable, of the Accomplishment Instructions of the EMBRAER Service Bulletin 145–53–0027, Revision 03, dated February 5, 2004.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

**Note 2:** 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."

**Note 3:** EMBRAER Service Bulletin 145–53–0027, Revision 03, dated February 5, 2004, refers to EMBRAER Model EMB–145 Structural Repair Manual, Chapter 53–12–11, dated July 18, 2001, as an additional source of information on the limits of acceptable wear.

(ii) If seats are found not to have P/N 1471610–00 or 1471611–00, and a S/N that is up to and including 324 inclusive, no further action is required by this paragraph.

(2) For airplanes having S/N 145004 through 145290 inclusive, do the actions specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) For airplanes with a seat track having P/N 145–33669–001: Do general visual and detailed inspections of the seat track(s) for proper locking of the seat and excessive wear, and do any applicable corrective action, in accordance with Part I and II, as applicable, of the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0027, Revision 03, dated February 5, 2004. Replace seat tracks that are found to have excessive wear within 50 flight hours after the inspection with a new seat track having P/N 145–33669–003 or 145–33669–601. Do any other applicable corrective action before further flight. Repeat the general visual and detailed inspections thereafter at intervals not to exceed 500 flight hours until the seat track is replaced by a new seat track having P/N 145–33669–003 or 145–33669–601.

(ii) For airplanes without a seat track having P/N 145–33669–001, no further action is required by this paragraph.

(3) For airplanes having S/N 145002 through 145560 inclusive: If any seat is found during the inspection required by paragraph (a)(1) of this AD that does not have a P/N and S/N specified in paragraph (a)(1)(i) of this AD, within 500 flight hours after the effective date of this AD, do a general visual and detailed inspection of the pilot's and co-pilot's seats for proper locking of the seats, and do all applicable related investigative and corrective action in accordance with Part III of the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0027, Revision 03, dated February 5, 2004, except as provided by paragraph (d) of this AD. Do any corrective actions before further flight.

#### Replacement

(b) For airplanes with a SICMA seat(s) bearing a part number (P/N) listed in Table 1 of this AD, within 1,000 flight hours after the effective date of this AD, replace the seat locking pin with a new, improved seat locking pin in accordance with the Accomplishment Instructions of SICMA Aero Seat Service Bulletin 147–25–020, Issue 2, dated December 22, 2003. For airplanes without any SICMA seat bearing a P/N listed in Table 1 of this AD, no further action is required by this paragraph.

TABLE 1.—SICMA SEAT P/NS

Part Number
1471610–00
1471610–01
1471610–02
1471610–03
1471611–00
1471611–01
1471611–02
1471611–03

#### Parts Installation

(c) As of the effective date of this AD, no SICMA seat bearing a P/N listed in Table 1 of this AD may be installed on any airplane unless the seat locking pin has been replaced in accordance with paragraph (b) of this AD.

#### Certain Repairs

(d) Where the EMBRAER service bulletin recommends contacting EMBRAER for appropriate action: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Departamento de Aviação Civil (or its delegated agent).

#### Actions Accomplished Per Previous Issue of Service Bulletin

(e) Accomplishment of the actions specified in EMBRAER Service Bulletin 145–53–0027, dated May 31, 2001; Revision 01, dated March 12, 2002; or Revision 02, dated January 24, 2003; before the effective date of this AD, is considered acceptable for compliance with the corresponding requirements of paragraph (a) of this AD.

(f) Accomplishment of the actions specified in SICMA Aero Seat Service

Bulletin 147–25–020, dated November 11, 2003; or Issue 1, dated December 3, 2003; before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

#### Alternative Methods of Compliance

(g)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Note 4:** The subject of this AD is addressed in Brazilian airworthiness directive 2002–09–01R1, dated June 2, 2004.

Issued in Renton, Washington, on October 25, 2005.

**Kalene C. Yanamura,**

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

[FR Doc. 05–22311 Filed 11–8–05; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2004–19866; Directorate Identifier 2004–NM–25–AD]

**RIN 2120–AA64**

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

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –300F series airplanes. The original NPRM would have required verifying the part and serial numbers of certain main landing gear (MLG) bogie beam pivot pins; replacing those pivot pins with new or overhauled pivot pins if necessary; and ultimately replacing all pivot pins with new, improved pivot pins. The original NPRM was prompted by reports indicating that numerous fractures of the MLG bogie beam pivot pin have been found and that some pivot pins may have had improper rework during manufacture. This action revises the original NPRM by adding new inspections; revising the inspection thresholds and repetitive intervals; and revising the compliance time for

replacing all pivot pins with new-material pins. We are proposing this supplemental NPRM to prevent fracture of the MLG bogie beam pivot pin, which could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control of the airplane.

**DATES:** We must receive comments on this supplemental NPRM by December 5, 2005.

**ADDRESSES:** Use one of the following addresses to submit comments on this supplemental NPRM.

- 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.

- 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 in person 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. This docket number is FAA–2004–19866; the directorate identifier for this docket is 2004–NM–25–AD.

**FOR FURTHER INFORMATION CONTACT:** Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2004–19866; Directorate Identifier 2004–NM–25–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will

consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. 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 can visit <http://dms.dot.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 in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

##### Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the “original NPRM”) for certain Boeing Model 767–200, –300, and –300F series airplanes. The original NPRM was published in the **Federal Register** on December 16, 2004 (69 FR 75270). The original NPRM proposed to require verifying the part and serial numbers of certain main landing gear (MLG) bogie beam pivot pins; replacing those pivot pins with new or overhauled pivot pins if necessary; and ultimately replacing all pivot pins with new, improved pivot pins.

##### Actions Since Original NPRM Was Issued

Since we issued the original NPRM, the manufacturer notified us that the parts necessary to accomplish the terminating action are not available in quantities that are sufficient for operators to accomplish the action within the proposed compliance time. In addition, the number of pivot pin failures has increased. This increase in failures combined with the limited

availability of parts for the terminating action caused the manufacturer to develop new inspection methods that provide an acceptable level of safety until the necessary parts can be obtained for the terminating action. These new inspection methods are provided in Boeing Alert Service Bulletin, 767-32A0199, Revision 2, dated May 26, 2005, which is described below. The manufacturer has assured us that it will be able to meet the new replacement schedule specified in this supplemental NPRM.

#### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767-32A0199, Revision 2, dated May 26, 2005 (Revision 1, dated July 22, 2004, was cited as the acceptable source of service information for certain actions in the original NPRM). This service bulletin describes procedures for doing repetitive lubrications of the old-material MLG bogie beam pivot pins. The service bulletin also describes procedures for doing repetitive inspections of the old-material pins according to one or more of the following three options, as applicable. The compliance time for doing the first inspection is before the pivot pin is 24 or 48 months old since the pivot pin was new or last overhauled, or within 12 months after the Revision 2 release date of the service bulletin, whichever is later.

*Repetitive inspection option 1:* Measure the length of the installed pivot pin to make sure it is not fractured. If the length of the pin exceeds the maximum shown in Figure 1 of the service bulletin, the service bulletin states that the pin may be fractured and gives procedures for doing the related investigative and corrective actions in repetitive inspection option 3. The service bulletin specifies that this measurement should be repeated one time per day.

*Repetitive inspection option 2:* Do an ultrasonic inspection of the installed pin for cracks. If any crack is found during this inspection, the service bulletin gives procedures for doing the related investigative and corrective actions in repetitive inspection option 3. The service bulletin specifies that this inspection should be repeated every 45 or 90 days, depending on the configuration group to which the airplane belongs.

*Repetitive inspection option 3:* Do detailed inspections with the pivot pin removed. The first detailed inspection is of the outer diameter of the pivot pin for bronze transfer, cracks, corrosion, and damage to the chrome plate. If a crack is found in the pivot pin, or if the pivot

pin outer diameter has bronze transfer or damage to the chrome plate, the service bulletin gives procedures for the corrective action of replacing the pin with a serviceable old-material pin or with a new-material pin before further flight. Replacing the pin with a new-material pin is terminating action for the remaining detailed inspections. The second detailed inspection is of the bogie beam pivot bushings for discrepancies such as damage, migration, rotation, or corrosion around the flange. If there is no discrepancy, the service bulletin states that no further inspection is necessary until the next repetitive inspection. If there is a discrepancy, the service bulletin gives procedures for corrective actions and related investigative actions, and specifies that operators do the third detailed inspection. The third detailed inspection is of the inner cylinder pivot bushings for discrepancies such as damage, migration, rotation, cracks, or corrosion around the flange. If there is no discrepancy, the service bulletin states that no further inspection is necessary until the next repetitive inspection. If there is a discrepancy, the service bulletin gives procedures for related investigative and corrective actions. The corrective actions and related investigative actions include further detailed inspections, eddy current inspections, etch inspections, and dye penetrant inspections, as applicable, for cracks, corrosion and other damage as applicable; and contacting Boeing for repair instructions. The service bulletin specifies that this inspection should be repeated every 24 or 48 months.

The alert service bulletin also gives procedures for replacing the pivot pin with a new-material pin. This replacement terminates the repetitive lubrications and repetitive inspections for the replaced pivot pin. The replacement involves, first, the related investigative actions of doing a detailed inspection of the pivot bushings and the pivot bushing on each lug of the MLG inner cylinder for discrepancies such as damage, migration, rotation, corrosion, and the bushing inner diameters, and corrective actions and related investigative actions, if necessary, before doing the replacement. Also, before installing the new-material pivot pin, the service bulletin gives procedures for cleaning pivot joint bushings that have not been previously replaced during the repetitive inspections, and applying new, specified, grease at the pivot joint lubrication fittings on the bogie beam and inner cylinder; applying the

specified grease by hand to the entire inner diameter of each of the pivot bushings on the bogie beam inner cylinder and the outer cylinder of the pivot pin. After the new-material pivot pin is installed, the service bulletin specifies that operators should lubricate the MLG pivot pins and the truck assemblies with the specified grease.

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

#### Comments

We have considered the following comments on the original NPRM.

#### Support for the Proposed Rule

Three commenters express support for the original NPRM. One of the commenters, the airplane manufacturer, states that it agrees with combining the actions in Boeing Alert Service Bulletins 767-32A0199, Revision 1, dated July 22, 2004, and 767-32A0202, dated July 22, 2004. The commenter states that releasing one AD to address the actions in both service bulletins benefits the operators of the 767 fleet because it will simplify logistics and reduce labor costs. The commenter further states that the number of suspect pins listed in Boeing Alert Service Bulletin 767-32A0202 is very small (less than 20) when compared with the larger population of pins that will eventually need to be replaced.

#### Request To Separate Actions in Two Service Bulletins

Another commenter, an airplane operator, states that the conditions addressed by Boeing Alert Service Bulletins 767-32A0199 and 767-32A0202 are unrelated and should not be combined in the same AD. The commenter maintains that the two service bulletins address very separate, unrelated problems written against the same part: Potential manufacturing irregularities in Boeing Alert Service Bulletin 767-32A0202, and the availability of a new-material part in Boeing Alert Service Bulletin 767-32A0199. The commenter asserts that if the data had supported that manufacturing irregularities affected part performance, it would support mandating Boeing Alert Service Bulletin 767-32A0202, but that Boeing Alert Service Bulletin 767-32A0199 is unrelated and should not be mandated. The commenter summarizes that the original NPRM lacks clarity regarding what unsafe condition the FAA is attempting to correct, and requests that the FAA either retract the original NPRM, or supersede with a new NPRM



that addresses, clearly and concisely, the FAA's concern.

*We disagree with the commenter.* Inspections and replacements that satisfy certain requirements of both bulletins can be performed at the same time. As stated by the previous commenter, combining the actions from these two service bulletins benefits the operators of the 767 fleet because it will simplify logistics and reduce labor costs. We agree with the commenter that Boeing Alert Service Bulletin 767–32A0202 addresses a quality assurance problem with certain pivot pins, and Boeing Alert Service Bulletin 767–32A0199 addresses deficiencies in the original design of the pivot pin; however, we do not agree that these service bulletins are unrelated and should not be combined in the same AD. Both service bulletins address failure of the same pivot pin, and therefore address the same unsafe condition, which is fracture of the MLG bogie beam pivot pin, which could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control of the airplane. We have not changed the supplemental NPRM in this regard.

#### **Request To Allow Time-Limited Re-installations With Additional Inspections**

The airplane manufacturer requests that the supplemental NPRM allow old-material pivot pins (part numbers (P/Ns) 16111145–2, –3, or –4) to be re-installed on a time-limited basis in lieu of installing the new-material pin (P/N 16111145–5), provided the old-material pin is free of cracks, corrosion, heat damage, and chrome-plate distress. The commenter proposes that the old-material pins could be used on a time-limited basis, and repetitive inspections required prior to replacement with the new-material pins.

*We agree with the commenter.* The airplane manufacturer was not able to supply sufficient new-material pins soon enough to satisfy the requirements proposed in the original NPRM. The commenter has assured the FAA that sufficient new-material pins will be supplied within the new replacement schedule proposed in this supplemental NPRM. The proposed additional inspections are designed to detect failure of the pin in the interim before the final terminating action of replacing the pins with new-material pins is accomplished. We have revised the supplemental NPRM to include the time-limited re-installation and the repetitive inspections.

#### **Request To Allow Six Months for Replacement**

The airplane manufacturer requests that paragraph (f)(2) of the original NPRM be revised to remove the requirement to replace suspect pins “prior to further flight.” The commenter instead requests that operators be allowed six months to accomplish the replacement, as stated in Boeing Alert Service Bulletin 767–32A0202. The commenter states that the six-month period would allow time for operators to plan for the pin replacement and to obtain the required parts while still maintaining an acceptable level of safety.

*We agree with the commenter.* Upon further review, we have determined that with the new repetitive inspections provided in this supplemental NPRM, a six-month replacement period provides an acceptable level of safety. We have revised the supplemental NPRM to include this change.

#### **Request for Alternate Solutions That Have Less Cost Impact**

The commenter is concerned that it will face extreme cost investments as a result of the mandatory pivot pin replacement. The commenter recommends that the FAA evaluate alternative solutions that have less cost impact for operators.

We agree that evaluating alternative solutions is important. Boeing has been evaluating many possible solutions since the fourth reported pivot pin failure in 2002 (previous failures occurred in 1991 and 1996). In 2002, in-service experience indicated the poor lubrication was the primary cause of the failure; however, some recent in-service failures show that the joint was properly lubricated. Therefore, we concluded that even with frequent lubrication, the rotating friction in the joint tends to dry the grease and produce localized heat damage on the pin. Boeing has reviewed many different options and has concluded that replacing the pin with the new-material pin is the most cost-effective and best solution. In addition, the new repetitive inspections and final replacement schedule will allow operators more time to plan for the cost of replacement.

#### **Request To Remove Actions in Boeing Alert Service Bulletin 767–32A0202**

The commenter, an airplane operator, asserts that the conditions listed in Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004, address potential documentation errors and do not constitute a safety concern that exists or is likely to exist on other

airplanes of the same design. The commenter maintains that the service bulletin states that some pivot pins may have been improperly processed during manufacture, and that the service bulletin recommends that the subject pivot pins, listed by P/N and S/N, be removed and either scrapped or overhauled. The commenter further advises that the manufacturer, in a telex to airplane operators, summarized that the subject pivot pins had discrepancies during manufacture, but that the manufacturing records were not complete in terms of showing all corrective processes. The commenter points out that the manufacturer, in an additional telex to airplane operators, stated that there were no reported pivot pin failures caused by the conditions in the service bulletin, and that the pivot pins were manufactured and sent to Boeing between 1998 and 2001, and therefore have been in service for 3 to 16 [sic] years. It has been the commenter's experience that the potential manufacturing defects reported in this service bulletin (heat damage, anode burns, or cracking), which should have been found by magnetic particle inspection or nitral etch, typically result in a rapid failure of the part, usually in less than 6 months. The commenter points out that a telex from the manufacturer stated that Boeing concurs that many of these types of defects would result in early failure of the parts. The expectation of early failure, and the lack of failure of any pivot pin listed in the service bulletin leads the commenter to conclude that the “problem” addressed in the service bulletin is poor recordkeeping rather than poor quality pivot pins. The commenter asserts that the fact that failures would be expected rapidly, in combination with no failures in this group of pivot pins during the last 16 [sic] years, supports its position that the conditions in the service bulletin address potential documentation errors rather than a safety concern.

We infer that the commenter is requesting that we remove the actions in Boeing Alert Service Bulletin 767–32A0202 from the requirements of the supplemental NPRM. We disagree with the request. We recognize that to date we have not received any reports of pin failures due to this condition. However, we have received numerous reports of failures in pins manufactured properly; and considering that the pins that are the subject of Boeing Alert Service Bulletin 767–32A0202 were not manufactured appropriately and do not meet the manufacturing standards, premature fracture is likely to occur.



Therefore, in the interest of air safety and the public interest, we have determined that retaining the actions of this service bulletin is necessary. We have not changed the supplemental NPRM in this regard.

#### **Request To Review Options Other Than Pivot Pin Replacement**

The commenter agrees with the FAA's desire to address pivot pin failures, but states that Boeing Alert Service Bulletin 767-32A0199, Revision 1, authorizes the use of a new pivot pin rather than giving a comprehensive summary of all possible actions that could reduce pivot pin failures. The commenter points out that a variety of conditions such as runway roughness, grease type, lubrication interval, and temperature during lube visits are all known factors that can contribute to premature pivot pin failure. The commenter further states that none of these factors are addressed in this service bulletin. The commenter gives the opinion that this service bulletin is not a comprehensive discussion of the various ways to reduce premature pivot pin failure, but is only the "authorization" of one particular method; the new-material pivot pin. The commenter maintains that mandating only one possible corrective action without addressing the other causes of pivot pin damage could be misleading as to the extent of the issue, and could prove to be a costly burden for operators that do not fully address the unsafe condition. The commenter then suggests that we address several options to reduce pivot pin failures such as grease type, lubrication intervals, and temperature during lubrication intervals. The commenter states that these options are far more significant factors in addressing premature pivot pin failure than the actions in the service bulletin, and also states that by implementing these options it has avoided having had an in-service pivot pin failure. The commenter feels that there is a significant lack of data, illustrated by the fact that the service bulletin states that several operators have reported pivot pin failures, although none has resulted in loss of the main landing gear (MLG) truck. The commenter argues that this lack of data supports a decision to revisit this proposed AD with the manufacturer in order to address the entire problem at hand.

*We partially agree with the commenter.* We agree that the problem should be revisited, and we are issuing this supplemental NPRM as a result of this and other comments we have received. In addition, Boeing has revised service bulletin 767-32A0199,

which is now at Revision 2, dated May 26, 2005. This revision of the service bulletin is cited as the appropriate source of service information for certain actions in this supplemental NPRM. Boeing revised the service bulletin because of the increased rate of pivot pin fractures since the release of Revision 1. Among other things, the service bulletin addresses lubrication intervals. We also agree that grease type, and temperature during lube visits are all known factors that can contribute to premature pivot pin failure; service experience has shown this. Although we agree that runway roughness can contribute to premature pivot pin failure, it does not affect any U.S. operator of these airplanes and is therefore not addressed in this supplemental NPRM. We disagree with removing the requirement to replace pivot pins with new pivot pins made of new material. Some of the fractured pins have shown evidence of correct grease, and no evidence of lack of lubrication. The original pin material is very sensitive to heat damage in service, even with proper maintenance; the new pin material is more robust. We also disagree that there is a significant lack of data supporting the need for this proposed action, illustrated by lack of examples of the loss of the MLG truck. As stated previously, the number of pivot pin failures has increased since the release of Revision 1 of the service bulletin. In one case, both halves of the pivot pin migrated out of the joint, and the airplane made a successful landing with the MLG truck attached only by the MLG brake rods. We have not changed the supplemental NPRM as a result of this comment, though we have reviewed other options, such as grease type and temperature during lubrication visits, and made some changes, addressed below, based on more detailed comments on similar topics from the same commenter.

#### **Request To Mandate Use of Royco-11MS Grease and Prohibit Mixing of Grease**

The same commenter requests that we consider mandating the use of Royco-11MS grease. The commenter asserts that one reason it has had no in-service pivot pin failures is due to the fact that it uses only this grease during lubrication. The commenter points out that Boeing Maintenance Tip 767-MT-32-022 discusses lubrication of critical landing gear joints, including the pivot pin, and states that this grease is desirable for highly loaded movable joints and that other grease is not adequate at these locations. The commenter explains that Royco-11MS

grease includes molybdenum, which acts like roller bearings in the joint and helps retain the grease in highly loaded joints such as the pivot pin joint. In addition, the commenter emphasizes that both Boeing Alert Service Bulletins 767-32A0199 and 767-32A0202 call for lubrication with Royco-11MS grease.

The same commenter requests that we consider prohibiting the mixing of grease types during lubrication for the same reason cited above. The commenter cites Flight Standards Information Bulletin FSAW 02-02B, which discusses the severity of the concern regarding mixing grease, and provides recommendations regarding purging old grease when grease usage is changed in a specific joint. The commenter stresses that both Boeing Alert Service Bulletins 767-32A0199 and 767-32A0202 call for installation with Royco-11MS grease. The commenter argues that if an operator is currently using a grease other than Royco-11MS grease, that operator will be forced to mix grease at that location because that grease is now mandated by the AD action, or the operator will be forced to obtain an alternative method of compliance (AMOC) in order to use its standard grease. The commenter emphasizes that the supplemental NPRM should address grease in a manner that reduces the likelihood of mixing grease.

*We agree with the commenter.* Royco-11MS grease is the only grease currently approved by the manufacturer for this joint, for the same reasons cited by the commenter. With the frequent lubrications proposed by this supplemental NPRM, using only Royco-11MS grease, proper lubrication procedures (*i.e.*, purging all old grease from the joint while lubricating) will ensure that old grease is purged from the joint. However, we have not changed the supplemental NPRM in this regard because the service bulletins, which are cited as the appropriate source of service information for this supplemental NPRM, already specify using this grease.

#### **Request To Mandate Minimum Temperature During Lubrication Visits**

The same commenter requests that we consider mandating minimum temperatures during lubrication visits. The commenter asserts that one reason it has had no in-service pivot pin failures is that it holds to a minimum ambient temperature during lubrication. The commenter states that certain maintenance documents recommend that operators ensure that grease application is done when temperatures are above freezing because cold grease

will not flow and is therefore not likely to adequately lubricate a large joint, such as the pivot pin joint, where the grease has to travel.

*We disagree with the commenter.* Certain maintenance procedures are documented in the component maintenance manual and the airplane maintenance manual; among these procedures are lubrication procedures. These lubrication procedures include industry "best practices" which are ensuring that grease is dispensed into grease fittings until the used grease is visually removed and only new grease comes out. If operators follow these lubrication procedures, the grease will be applied properly. Mandating a minimum temperature will not ensure that proper lubrication has taken place. We have not changed the supplemental NPRM in this regard.

#### **Request To Mandate Shorter Lubrication Intervals**

The same commenter requests that we consider mandating shorter lubrication intervals. The commenter asserts that one reason it has had no in-service pivot pin failures is that it has an aggressive lubrication schedule. These lubrication intervals are addressed in numerous sources including the maintenance planning document (MPD). The commenter states that it lubricates the pivot pin joints with Royco-11MS grease every 125 hours, more frequently than the 1A recommendation in the MPD.

*We partially agree with the commenter.* We agree with mandating shorter lubrication intervals. As part of the supplemental NPRM, we are increasing the length of time (for some airplanes) that the old-material pins can remain in service. In order for the old-material pins to remain in service and still provide an acceptable level of safety, we have specified more frequent lubrication in order to minimize the risk of heat damage. Boeing's research shows that lubricating every 14 days or 50 flight cycles, whichever occurs earlier, will be more effective in preventing heat damage to the pins than the 1A interval, which is typically equivalent to 300 flight cycles. We have added a new paragraph (h) to the supplemental NPRM to account for these shorter lubrication intervals.

#### **Request To Allow Review of Maintenance Records**

Several commenters requested that we revise the supplemental NPRM to allow the option to review maintenance records to determine the P/N and S/N of the pivot pin in lieu of inspecting the pin itself as currently specified in the proposed AD. The commenters maintain

records for the applicable pins installed on all aircraft. These records identify both P/Ns and S/Ns.

*We agree with the commenters.* Reviewing existing records of P/Ns and S/Ns is an acceptable method for identifying the pivot pin. We have revised paragraph (f) of the supplemental NPRM to include this review.

#### **Request To Clearly Exclude Certain Pivot Pins**

One commenter requests that we revise paragraph (f)(1) of the original NPRM to clearly and specifically exclude pivot pins that have a P/N and S/N that is outside the applicable range of the proposal. The commenter suggests that we include a citation of Figure 1 of Boeing Alert Service Bulletin 767-32A0202 in this paragraph in order to exclude certain pins.

We infer that the commenter finds paragraph (f)(1) to be unclear, and we agree with the requested change in order to provide the greatest clarity. We have revised paragraph (f)(1) of the supplemental NPRM to include the commenter's suggested change.

#### **Request To Include Alternative Method for Replacing Pivot Pins**

One commenter requests that we incorporate in the supplemental NPRM a more efficient, alternative method for replacing the pivot pins. The commenter makes this suggestion in order to avoid the costly purchase of numerous new-material pivot pins, and possible manufacturing shortages of these pins. The commenter feels that its suggestion would provide an acceptable level of safety. The commenter's suggested alternative method involves removing any old-material pins in accordance with Boeing CMM, Subject 32-11-30, stripping the chrome plate, and doing a magnetic particle examination of the base metal for cracks and/or discrepancies. The commenter then suggests refinishing serviceable units in accordance with Boeing CMM, Subject 32-11-30, updating the bogie beam and inner cylinder pivot pin bushing in accordance with Boeing Service Bulletin 767-32-0021, Revision 3, and assembling the pivot pin joint using only Royco 11-MS grease. The commenter then suggests identifying each of the five pivot pin joint zerk fitting locations per gear to specify using only Royco 11-MS grease, and setting the lubrication interval at the 1A intervals from the MPD.

*We disagree with the commenter.* The commenter did not provide any justification to show that its proposal offers an acceptable level of safety.

However, under the provisions of paragraph (l) of the supplemental NPRM, if the commenter would like to submit this proposal as an AMOC with the appropriate substantiation, we will consider the proposal at that time.

#### **Explanation of Further Changes Made to the Original NPRM**

Boeing has received a Delegation Option Authorization (DOA). We have revised this supplemental NPRM to delegate the authority to approve an alternative method of compliance for any repair that would be required by this supplemental NPRM to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

#### **FAA's Determination and Proposed Requirements of the Supplemental NPRM**

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

#### **Differences Between the Supplemental NPRM and the Service Bulletins**

Although Boeing Alert Service Bulletin 767-32A0199, Revision 2, specifies that operators may contact the manufacturer for certain compliance times for "Group 2 airplanes that have been operated at weights less than 353,000 pounds since pivot pin installation," this supplemental NPRM would require operators to contact the FAA for an AMOC for new compliance times in accordance with paragraph (l) of the supplemental NPRM.

In addition, Boeing Alert Service Bulletin 767-32A0199, Revision 2, specifies that operators may contact the manufacturer for instructions on how to repair certain conditions, but this supplemental NPRM would require operators to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the

certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization whom we have authorized to make those findings.

Boeing Alert Service Bulletin 767-32A0199, Revision 2, and Boeing Alert

Service Bulletin 767–32A0202, specify compliance times relative to the date the service bulletin was issued or released; however, this supplemental NPRM would require compliance times relative to the effective date of the AD.

Boeing Alert Service Bulletin 767–32A0202 specifies that operators may do a “check” of the P/Ns and S/Ns of

certain MLG bogie beam pivot pins. However, this supplemental NPRM would call this action a “general visual inspection.” We have determined that trained maintenance personnel must perform this action, whereas untrained personnel may perform a “check.” Note 1 of the supplemental NPRM describes a general visual inspection.

### Costs of Compliance

There are about 857 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Pin Inspection .....	1	\$65	None .....	\$65 .....	374	\$24,310.
Repetitive Lubrication ..	1	\$65	None .....	\$65, per inspection cycle.	374	\$55,705, per lubrication cycle.
Repetitive Inspection Option 1: Length Measurement.	1	\$65	None .....	\$65, per inspection cycle.	374	N/A.
Repetitive Inspection Option 2: Ultrasonic cycle Inspection.	2	\$65	None .....	\$130, per inspection cycle.	374	N/A.
Repetitive Inspection Option 3: Detailed Inspection (with Pivot Pin Removed).	14	\$65	None .....	\$910, per inspection cycle.	374	N/A.
Pivot Pin Short-term Replacement (Optional), pin per pivot.	12	\$65	\$5,369, per pivot pin ...	\$6,149, per pivot pin ...	374	N/A.
Terminating Action (Permanent Replacement).	14	\$65	\$11,686, per pivot pin	\$12,596, per pivot pin	374	\$4,710,904.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### 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 supplemental NPRM. 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–2004–19866; Directorate Identifier 2004–NM–25–AD.

#### Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 5, 2005.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004, and Boeing Alert Service Bulletin 767–32A0199, Revision 2, dated May 26, 2005.

#### Unsafe Condition

(d) This AD was prompted by reports indicating that numerous fractures of the main landing gear (MLG) bogie beam pivot

pin have been found and that some pivot pins may have had improper rework during manufacture. We are issuing this AD to prevent fracture of the MLG bogie beam pivot pin, which could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control 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 for Part Number and Serial Number, and Short-Term Replacement

(f) Within 6 months after the effective date of this AD, do a general visual inspection of the part number (P/N) and serial number (S/N) of the MLG bogie beam pivot pin in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767-32A0202, dated July 22, 2004. A review of airplane maintenance records is acceptable for compliance with this paragraph if the P/N and S/N of the MLG bogie beam pivot pin can be positively determined from that review.

(1) If the S/N of the pivot pin contains the letters "MA" or "MAM," or if the S/N of the pivot pin is not listed in Figure 1 of the service bulletin, no further action is required by this paragraph.

(2) If any pivot pin has a P/N and S/N that is listed in Figure 1 of the service bulletin, within 6 months after the effective date of this AD: Replace the pivot pin with an overhauled pin having P/N 161T1145-2, -3, or -4, that includes a chrome plate strip as part of the pin overhaul; or with a new-material pin having P/N 161T1145-5; in accordance with paragraph (j) of this AD. Replacing the pin with a new-material pin having P/N 161T1145-5 in accordance with the Accomplishment Instructions of the service bulletin, terminates the requirements of this AD for that pivot pin.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

#### Discrepancy Reporting

(g) If any pivot pin has a P/N and S/N listed in Figure 1 of Boeing Alert Service Bulletin 767-32A0202, dated July 22, 2004, submit a report of the inspection required by paragraph (f) of this AD to the Manager, Airline Support, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. The report must include the P/N and

S/N of the pivot pin, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120-0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

#### Repetitive Lubrication

(h) Within 30 days after the effective date of this AD: Do the pivot pin special lubrication in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767-32A0199, Revision 2, including Appendix A, dated May 26, 2005. Repeat the lubrication thereafter at intervals not to exceed 14 days or 50 flight cycles, whichever occurs earlier. Doing the terminating action in paragraph (j) of this AD ends the inspection requirements of this paragraph.

#### Repetitive Pin Inspections

(i) Except as provided by paragraph (i)(1) and (i)(2) of this AD, at the applicable compliance time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767-32A0199, Revision 2, including Appendix A, dated May 26, 2005, do one of the following inspections of the installed pivot pin in accordance with the specified part of the service bulletin: Part 2—Length Measurement, Part 3—Ultrasonic Inspection, or Part 4—Detailed Inspection; and do any applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of the service bulletin. Doing the replacement specified in paragraph (j) of this AD ends the inspection requirements of this paragraph.

(1) Where the service bulletin specifies a compliance time based on the release date of Revision 2 of the service bulletin, this AD requires compliance based on the effective date of this AD.

(2) Where the Note at the end of Table 1 in paragraph 1.E., "Compliance," of the service bulletin specifies to contact Boeing for a longer compliance time for "Group 2 airplanes that have been operated at weights less than 353,000 pounds since pivot pin installation": Operators must contact the Manager, Seattle Aircraft Certification Office (ACO), FAA, for an alternative method of compliance in accordance with paragraph (l) of this AD for any requests for a longer compliance time.

**Note 2:** 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."

#### Terminating Action

(j) At the applicable compliance time in paragraph (j)(1) or (j)(2) of this AD, replace any MLG bogie beam pivot pin having P/N 161T1145-2, -3, or -4, with a new, improved pivot pin having P/N 161T1145-5; and do all applicable related investigative and corrective actions before further flight; in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767-32A0199, Revision 2, including Appendix A, dated May 26, 2005. Where the Note at the end of Table 1 in paragraph 1.E., "Compliance," of the service bulletin specifies to contact Boeing for a longer compliance time for "Group 2 airplanes that have been operated at weights less than 353,000 pounds since pivot pin installation"; operators must contact the Manager, Seattle Aircraft Certification Office (ACO), FAA, for an alternative method of compliance in accordance with paragraph (l) of this AD for any requests for a longer compliance time. Doing the replacement in accordance with this paragraph terminates the requirements of this AD for that pivot pin.

(1) For airplanes identified in the service bulletin as Group 1 airplanes: Within 96 months after the effective date of this AD.

(2) For airplanes identified in the service bulletin as Group 2 airplanes: Within 48 months after the effective date of this AD.

#### Actions Accomplished According to Previous Issues of Service Bulletin

(k) Replacing any pivot pin with a new, improved pivot pin having P/N 161T1145-5, before the effective date of this AD in accordance with the service bulletins identified in Table 1 of this AD is considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1.—PREVIOUS ISSUES OF SERVICE BULLETIN

Boeing Alert Service Bulletin	Revision	Date
767-32A0199 ...	Original	April 8, 2004.
767-32A0199 ...	1 .....	July 22, 2004.

#### Alternative Methods of Compliance (AMOCs)

(l)(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 any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(3) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on November 3, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 05-22310 Filed 11-8-05; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-22872; Directorate Identifier 2005-NM-198-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) airplanes. This proposed AD would require replacing the Camloc fasteners on the sidewall of the center pedestal. This proposed AD results from reports of the Camloc fasteners on the sidewall of the center pedestal disengaging and interfering with an inboard rudder pedal. We are proposing this AD to prevent these fasteners from disengaging and interfering with an inboard rudder pedal, which could reduce directional controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by December 9, 2005.

**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.

- 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.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

#### **FOR FURTHER INFORMATION CONTACT:**

Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228-7305; fax (516) 794-5531.

#### **SUPPLEMENTARY INFORMATION:**

##### **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 in the **ADDRESSES** section. Include the docket number "FAA-2005-22872; Directorate Identifier 2005-NM-198-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 received 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 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>.

##### **Examining the Docket**

You may 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 Docket Management System receives them.

##### **Discussion**

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) airplanes. TCCA advises that it has received several reports of the Camloc fasteners on the sidewall of the center pedestal fully disengaging and interfering with an inboard rudder pedal. These incidents occurred on Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. In one incident, the rudder jammed during an approach due to a disengaged Camloc fastener that restricted movement of the pilot's inboard rudder pedal and tow brake. This condition, if not corrected, could reduce directional controllability of the airplane.

The subject configuration on certain Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) airplanes is almost identical to that on the affected Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. Therefore, those Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) airplanes may be subject to the unsafe condition revealed on the Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes.

##### **Relevant Service Information**

Bombardier has issued Service Bulletin 670BA-25-037, Revision A, dated August 25, 2005. The service bulletin describes procedures for replacing, with screws and nut plate assemblies, the Camloc fasteners on the left and right sidewalls of the center pedestal. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF-2005-31, dated August 17, 2005, to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are 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, TCCA has kept the FAA informed of the situation described above. We have examined TCAA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of these type designs that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

### Costs of Compliance

This proposed AD would affect about 209 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. Required parts would cost between \$141 and \$150 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between \$56,639 and \$58,520, or between \$271 and \$280 per airplane.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### 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 and placed it in the AD docket. 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

#### **Bombardier, Inc. (Formerly Canadair):**

Docket No. FAA-2005-22872;  
Directorate Identifier 2005-NM-198-AD.

#### **Comments Due Date**

- (a) The FAA must receive comments on this AD action by December 9, 2005.

#### **Affected ADs**

- (b) None.

#### **Applicability**

- (c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Bombardier models	Serial numbers
CL-600-2C10 (Regional Jet Series 700, 701, & 702) .....	10003 through 10218 inclusive.
CL-600-2D15 (Regional Jet Series 705); CL-600-2D24 (Regional Jet Series 900) .....	15001 through 15047 inclusive.

### Unsafe Condition

(d) This AD results from reports of the Camloc fasteners on the sidewall of the center pedestal disengaging and interfering with an inboard rudder pedal. We are issuing this AD to prevent these fasteners from disengaging and interfering with an inboard rudder pedal, which could reduce directional 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.

### Replacement of Fasteners

(f) Within 5,500 flight hours after the effective date of this AD, replace, with screws

and nut plate assemblies, the Camloc fasteners on the left and right sidewalls of the center pedestal, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA-25-037, Revision A, dated August 25, 2005.

### Actions Accomplished Previously

(g) Replacing fasteners before the effective date of this AD in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA-25-037, dated June 23, 2005, is acceptable for compliance with the requirements of paragraph (f) of this AD.

### Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in

accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

### Related Information

(i) Canadian airworthiness directive CF-2005-31, dated August 17, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on October 28, 2005.

**Kalene C. Yanamura,**

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

[FR Doc. 05-22307 Filed 11-8-05; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-22871; Directorate Identifier 2005-NM-191-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-120, -120ER, -120FC, -120QC, and -120RT Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB-120, -120ER, -120FC, -120QC, and -120RT airplanes. This proposed AD would require installing a rivet and washer in the hole of the upper frame of the auxiliary power unit (APU) firewall. This proposed AD results from a report indicating that, during production, a pinhole was left open at the upper frame of the APU firewall. We are proposing this AD to ensure that the APU compartment is isolated from the rest of the airplane in the event of an APU fire.

**DATES:** We must receive comments on this proposed AD by December 9, 2005.

**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.

- *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.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “FAA-2005-22871; Directorate Identifier 2005-NM-191-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 received 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 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>.

##### **Examining the Docket**

You may 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 Docket Management System receives them.

##### **Discussion**

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an

unsafe condition may exist on certain EMBRAER Model EMB-120, -120ER, -120FC, -120QC, and -120RT airplanes. The DAC advises that a pinhole used for the manufacturing process was left open. The hole was at the upper frame of the auxiliary power unit (APU) firewall. To meet the sealing requirements for the firewall, a rivet and stainless steel washer must be installed. In the event of an APU fire, a hole in the firewall would not isolate the APU compartment from the rest of the airplane.

##### **Relevant Service Information**

EMBRAER has issued Service Bulletin 120-53-0080, dated November 30, 2004. The service bulletin describes procedures for installing a rivet and stainless steel washer in the hole of the upper frame of the APU firewall. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005-08-03, dated September 5, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

##### **FAA’s Determination and Requirements of the Proposed AD**

These airplane models are manufactured in Brazil and are 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 DAC has kept the FAA informed of the situation described above. We have examined the DAC’s findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed below.

##### **Differences Between the Proposed AD and the Brazilian Airworthiness Directive**

The Brazilian airworthiness directive applies to “all Embraer EMB-120( ) aircraft models in operation.” However, this proposed AD would apply only to the airplanes with the serial numbers identified in the EMBRAER service bulletin. Airplanes not identified receive an equivalent modification during production.



## Costs of Compliance

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 air-plane	Number of U.S.-registered airplanes	Fleet cost
Rivet installation .....	1	\$65	Operator-supplied .....	\$65	108	\$7,020

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## 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 and placed it in the AD docket. 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket No. FAA-2005-22871; Directorate Identifier 2005-NM-191-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by December 9, 2005.

#### Affected ADs

- (b) None.

#### Applicability

(c) This AD applies to EMBRAER Model EMB-120, -120ER, -120FC, -120QC, and -120RT airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 120-53-0080, dated November 30, 2004.

#### Unsafe Condition

(d) This AD results from a report indicating that, during production, a pinhole was left open at the upper frame of the auxiliary power unit (APU) firewall. We are issuing this AD to ensure that the APU compartment is isolated from the rest of the airplane in the event of an APU fire.

#### 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.

## Rivet Installation

(f) Within 4,000 flight hours or 24 months, whichever occurs first after the effective date of this AD: Install a rivet and washer in the hole of the upper frame of the APU firewall, in accordance with EMBRAER Service Bulletin 120-53-0080, dated November 30, 2004.

## Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

## Related Information

(h) Brazilian airworthiness directive 2005-08-03, dated September 5, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on October 26, 2005.

**Kalene C. Yanamura,**

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

[FR Doc. 05-22304 Filed 11-8-05; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-22875; Directorate Identifier 2005-NM-179-AD]

**RIN 2120-AA64**

### Airworthiness Directives; Short Brothers Model SD3-60 SHERPA, SD3-SHERPA, and SD3-60 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness



directive (AD) that applies to all Short Brothers Model SD3-60 and SD3-SHERPA airplanes. The existing AD currently requires an inspection of the fork end of the rear pintle pin on each main landing gear (MLG) to verify that sealant is properly applied and is undamaged, and related investigative/corrective actions if necessary. This proposed AD would add an inspection for correctly applied sealant on the MLG rear pintle pin assemblies, and related investigative/corrective actions if necessary. This proposed AD would also expand the applicability of the existing AD. This proposed AD results from a new report of a cracked pintle pin fork end. We are proposing this AD to prevent stress-corrosion cracking and subsequent failure of the MLG.

**DATES:** We must receive comments on this proposed AD by December 9, 2005.

**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.

- 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.

Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for service information identified in this proposed AD.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA-2005-22875; Directorate Identifier 2005-NM-179-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 received 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 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>.

##### **Examining the Docket**

You may 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 Docket Management System receives them.

##### **Discussion**

On January 25, 1993, we issued AD 93-02-03, amendment 39-8485 (58 FR 7983, February 11, 1993), for all Short Brothers Model SD3-60 and SD3-SHERPA airplanes. That AD requires an inspection of the fork end of the rear pintle pin on each main landing gear (MLG) to verify that sealant is properly applied and is undamaged; removal of the bushings and an inspection to detect faults of the bores in the fork end, if necessary; and repair of the fork end of the pintle pin, if necessary. That AD resulted from a report of a cracked fork end of the MLG rear pintle pin. We issued that AD to prevent stress-corrosion cracking and subsequent failure of the MLG.

##### **Actions Since Existing AD Was Issued**

Since we issued AD 93-02-03, we have learned about another incident of a cracked pintle pin fork end on a Model SD3 airplane.

##### **Relevant Service Information**

Shorts has issued Service Bulletins SD360 Sherpa-32-4 (for Model SD3-60 SHERPA airplanes), SD3 Sherpa-32-5 (for Model SD3-SHERPA airplanes), and SD360-32-37 (for Model SD3-60 airplanes), all dated July 2004. The service bulletins describe procedures for an inspection to determine whether sealant has been properly applied on the MLG rear pintle pin assemblies, and related investigative/corrective actions for missing or damaged sealant. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, mandated the service information and issued British airworthiness directive G-2004-0022, dated August 25, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

The service bulletins refer to Messier Dowty Service Bulletin 32-70SD, Revision 1, dated July 3, 1995, as an additional source of service information for the inspection and related investigative/corrective actions.

##### **FAA's Determination and Requirements of the Proposed AD**

These airplane models are manufactured in the United Kingdom and are 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 has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 93-02-03 and would retain the requirements of the existing AD. This proposed AD would also expand the applicability for the actions specified in service information described previously, except as discussed below.

##### **Difference Between the Proposed AD and Service Information**

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the CAA (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 approve would be acceptable for compliance with this proposed AD.

### Clarification of Inspection Terminology

In this proposed AD, the inspection specified in the service bulletins is referred to as a "general visual inspection." Note 1 in this proposed AD defines this type of inspection.

### Costs of Compliance

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 air-plane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 93-02-03) ....	1	\$65	None	\$65	42	\$2,730
Inspection (new proposed action) .....	1	65	None	65	42	2,730

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### 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 and placed it in the AD docket. 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-8485 (58 FR 7983, February 11, 1993) and adding the following new airworthiness directive (AD):

**Short Brothers PLC:** Docket No. FAA-2005-22875; Directorate Identifier 2005-NM-179-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by December 9, 2005.

#### Affected ADs

(b) This AD supersedes AD 93-02-03.

#### Applicability

(c) This AD applies to all Shorts Model SD3-60 SHERPA, SD3-SHERPA, and SD3-60 airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD results from a new report of a cracked pintle pin fork end. We are issuing this AD to prevent stress-corrosion cracking and subsequent failure of the main landing gear (MLG).

#### 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.

### Restatement of Requirements of AD 93-02-03

#### Inspection

(f) For Model SD3-60 and SD3-SHERPA airplanes: Within 300 hours' time-in-service or 30 days after March 18, 1993 (the effective date of AD 93-02-03), whichever occurs first, perform a visual inspection of the fork end of the rear pintle pin on each MLG to verify that an undamaged fillet of sealant is properly applied around the flanges of the bronze bushings, in accordance with Shorts SD3-60 Service Bulletin SD360-32-33, dated August 7, 1992.

(1) If an undamaged fillet of properly applied sealant is found: No further action is required by this AD.

(2) If no fillet of sealant is found at the joint line, or if a damaged fillet of sealant is found: Prior to the accumulation of 1,200 hours' time-in-service or 120 days after accomplishing the inspection required by paragraph (f) of this AD, whichever occurs first, remove the bushings and perform a magnetic non-destructive testing (NDT) inspection to detect faults of the bores in the fork end, in accordance with the service bulletin. If faults are found as a result of the NDT inspection, prior to further flight, repair the fork end of the rear pintle pin in a manner approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA.

### New Requirements of This AD

#### Inspection

(g) For all airplanes: Within 3 months after the effective date of this AD, do a general visual inspection of the MLG rear pintle pin assemblies for correctly applied sealant, in accordance with Shorts Service Bulletin SD360-32-37, SD3 SHERPA-32-5, or SD360 SHERPA 32-4, all dated July 2004, as applicable.

(1) If the sealant is applied correctly: This AD requires no further work.

(2) If the sealant is applied incorrectly: Within 12 months after the effective date of this AD, do a magnetic flaw detection inspection to detect cracks of the rear pintle pin fork ends, in accordance with the service bulletin. If any cracked pintle pin fork end is found: Replace it before further flight with a serviceable part that has been inspected in accordance with the requirements of this AD.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual

examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

**Note 2:** The service bulletins identified in paragraph (g) of this AD refer to Messier Dowty Service Bulletin 32-70SD, Revision 1, dated July 3, 1995, as an additional source of service information for the inspection and corrective actions.

(h) If any crack is detected during any inspection required by this AD and the service information specifies to contact the manufacturer for repair instructions: Before further flight, repair using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

#### *Alternative Methods of Compliance (AMOCs)*

(i)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### *Related Information*

(j) British airworthiness directive G-2004-0022, dated August 25, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on October 28, 2005.

**Kalene C. Yanamura,**

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

[FR Doc. 05-22305 Filed 11-8-05; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA-2005-22874; Directorate Identifier 2005-NM-173-AD]

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 777-200 and -300 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777-200 and -300 series airplanes. This proposed AD would require inspecting the lower web of the aft fairing of engine struts for any discoloration and doing any related investigative and corrective action if necessary; inspecting the heat shield castings for any damage and doing any corrective action if necessary; installing gap cover strips; and replacing insulation blankets with new insulation blankets. This proposed AD results from a report that several discolored fairing lower webs and some damaged/deteriorated insulation blankets were found in the aft fairings of engine struts. We are proposing this AD to prevent cracking of lower webs of the aft fairings, which could result in flammable hydraulic fluid leaking onto or near an ignition source, and possibly result in an uncontrollable fire in the engine strut area.

**DATES:** We must receive comments on this proposed AD by December 27, 2005.

**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.

- 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.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** John Vann, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6513; fax (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

##### **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 in the **ADDRESSES** section. Include the docket number "FAA-2005-22874; Directorate Identifier 2005-NM-173-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 received 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>.

#### **Examining the Docket**

You may 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 Docket Management System receives them.

#### **Discussion**

We have received a report indicating that damaged/deteriorated thermal insulation blankets and discolored fairing lower webs were found in the aft fairings of engine struts on several Model 777-200 and -300 series airplanes. Gaps in the segmented heat shield in the strut aft fairings allow engine primary/main exhaust to enter the heat shield cavity in the strut aft fairing. The temperature of the exhaust that leaks into the heat shield cavity exceeds the insulation blankets' maximum design tolerance. Since the insulation blankets provide thermal protection for the aluminum fairing lower web, degradation of an insulation blanket allows thermal distress of the lower web and eventually, cracking of the lower web. A cracked lower web is

also a possible leak path for hydraulic fluid to come into direct contact with the heat shield, the temperature of which can exceed the hydraulic fluid's auto-ignition temperature (750 degrees Fahrenheit). Gaps in the heat shield, if not corrected, could result in cracked fairing lower webs and consequently leak flammable hydraulic fluid onto or near an ignition source and possibly result in an uncontrollable fire in the engine strut area.

#### Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777-54-0021, dated June 23, 2005. The service bulletin describes the following procedures:

- Doing a general visual inspection of the lower web of the aft fairing for any discoloration and doing any related investigative and corrective action if necessary;
- Doing a general visual inspection of the heat shield castings for any damage (crack(s), dent(s), gouge(s), warpage, or fretting) and doing any corrective action if necessary;
- Installing gap cover strips; and
- Replacing insulation blankets with new blankets.

The related investigative action is a special detailed inspection for heat damage and for cracks at the fastener holes of areas with discolored paint or primer. The corrective action is to contact Boeing for repair instructions if any damage is found during the inspections.

The corrective action for any damage found during an inspection of the heat shield castings involves contacting Boeing for instructions on repairing or replacing damaged heat shields before further flight.

Replacing the insulation blankets with new insulation blankets may involve modifying the configuration of the insulation blanket velcro strips into a new configuration if the strips were previously installed in a particular configuration before 1997.

Accomplishing the actions specified in 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. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under

"Difference Between the Proposed AD and the Service Bulletin."

#### Difference Between the Proposed AD and the Service Bulletin

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the

certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

#### Costs of Compliance

There are about 294 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 72 airplanes of U.S. registry. The proposed actions would take about 9 to 11 work hours per airplane, depending on engine manufacturer (configuration), at an average labor rate of \$65 per work hour. Required parts would cost about \$15,368 to \$16,179 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$1,148,616 to \$1,216,368, or \$15,953 to \$16,894 per airplane.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### 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 and placed it in the AD docket. 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA-2005-22874; Directorate Identifier 2005-NM-173-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by December 27, 2005.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to Boeing Model 777-200 and -300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777-54-0021, dated June 23, 2005.

#### Unsafe Condition

- (d) This AD results from a report that several discolored fairing lower webs and some damaged/deteriorated insulation blankets were found in the aft fairings of engine struts. We are issuing this AD to prevent cracking of lower webs of the aft fairings, which could result in flammable hydraulic fluid leaking onto or near an ignition source, and possibly result in an uncontrollable fire in the engine strut area.

**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, Installation, and Replacement Actions**

(f) Except as provided by paragraph (g) of this AD: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-54-0021, dated June 23, 2005. Do any corrective or related investigative action before further flight in accordance with the service bulletin.

(1) Do a general visual inspection of the lower web of the aft fairing for any discoloration and do any applicable related investigative and corrective action.

(2) Do a general visual inspection of the heat shield castings for any damage (crack(s), dent(s), gouge(s), warpage, or fretting) and do any applicable corrective action.

(3) Install gap cover strips on the heat shield pans.

(4) Replace insulation blankets on the heat shield pans with new insulation blankets.

**Repair Instructions**

(g) If any damage, discoloration, heat damage, or crack(s) is found during any inspection required by this AD, and Boeing Special Attention Service Bulletin 777-54-0021, dated June 23, 2005, specifies contacting Boeing for appropriate action: Before further flight, repair the damage using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) 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.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on October 26, 2005.

**Kalene C. Yanamura,**

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

[FR Doc. 05-22306 Filed 11-8-05; 8:45 am]

**BILLING CODE 4910-13-P**

**LEGAL SERVICES CORPORATION****45 CFR Part 1621****Notice of Rulemaking Workshop—Request for Expressions of Interest in Participation**

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of Rulemaking Workshop and Request for Expressions of Interest in Participation in Workshop.

**SUMMARY:** LSC is conducting a Rulemaking Workshop in connection with its rulemaking to consider revisions to its regulations on client grievance procedures at 45 CFR part 1621. LSC hereby solicits expressions of interest in participation in the Workshop from the regulated community, its clients, advocates, the organized bar and other interested parties.

**DATES:** Expressions of interest must be received by December 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, Vice President & General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295-1620 (phone); 202-337-6831 (fax) or [vfortuno@lsc.gov](mailto:vfortuno@lsc.gov).

**SUPPLEMENTARY INFORMATION:** The Legal Services Corporation ("LSC") has initiated a rulemaking to consider revisions to 45 CFR part 1621 (Client Grievance Procedure). As part of this rulemaking proceeding, LSC is convening a Rulemaking Workshop prior to the development of a Draft Notice of Proposed Rulemaking. The Rulemaking Workshop will be held on January 18, 2006, from 9 a.m.-5 p.m., EST. The Rulemaking Workshop will be held in LSC's Conference Center, on the 3rd floor of 3333 K St., NW., Washington, DC 20007.

Under the LSC Rulemaking Protocol:

Rulemaking Workshops [\* \* \*] enable LSC Board members and staff to meet with stakeholders prior to the development of a draft NPRM to discuss, but not negotiate, LSC rules and regulations. LSC believes the Notice and Comment process, including Rulemaking Workshops, [\* \* \*] allow for an effective dialog between LSC and its recipients and other interested parties, in those instances in which Negotiated Rulemaking is not used.

When the Board has decided to initiate a rulemaking and to conduct a Rulemaking Workshop, [LSC's Office of Legal Affairs] will work with the Board and staff to select a date for the Rulemaking Workshop and will invite participants from the interested stakeholder community. The Workshop will be a meeting at which the participants hold open discussions designed to elicit information about problems or concerns with the

regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. The Workshop is not intended [to] develop detailed alternatives or to obtain consensus on regulatory proposals. Upon the conclusion of the Workshop, the Board shall provide LSC staff with policy guidance on the issues discussed to aid staff in the development of the Draft Notice of Proposed Rulemaking ("NPRM"). 67 FR 69762, 69763 (November 19, 2002).

With this notice, LSC is inviting expressions of interest from the interested stakeholder community to participate in the Rulemaking Workshop. Expressions of interest should be forwarded in writing to Victor M. Fortuno, Vice President & General Counsel, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007. Such expressions of interest may be alternatively sent via e-mail to [vfortuno@lsc.gov](mailto:vfortuno@lsc.gov) or via fax to (202) 337-6831, but must be received by close of business on December 2, 2005. LSC will select participants shortly thereafter and will inform all those who expressed interest of whether or not they have been selected.

The Workshops will be open to public observation but only persons selected will be allowed to participate. Participants are expected to cover their own expenses (travel, lodging, etc.). LSC may consider providing financial assistance to participants for whom travel costs would represent a significant hardship and barrier to participation. Any such person should so note in his/her expression of interest for LSC's consideration.

**Victor M. Fortuno,**

*Vice President & General Counsel.*

[FR Doc. 05-22288 Filed 11-8-05; 8:45 am]

**BILLING CODE 7050-01-P**

**LEGAL SERVICES CORPORATION****45 CFR Part 1624****Notice of Rulemaking Workshop—Request for Expressions of Interest in Participation**

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of Rulemaking Workshop and Request for Expressions of Interest in Participation in Workshop.

**SUMMARY:** LSC is conducting a Rulemaking Workshop in connection with its rulemaking to consider revisions to its regulations on prohibition on discrimination on the basis of handicap at 45 CFR part 1624. LSC hereby solicits expressions of interest in participation in the Workshop from the regulated

community, its clients, advocates, the organized bar, the disability rights community and other interested parties.

**DATES:** Expressions of interest must be received by November 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, Vice President & General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295-1620 (phone); (202) 337-6831 (fax) or [vfortuno@lsc.gov](mailto:vfortuno@lsc.gov).

**SUPPLEMENTARY INFORMATION:** The Legal Services Corporation ("LSC") has initiated a rulemaking to consider revisions to 45 CFR part 1624 (Prohibition Against Discrimination on the Basis of Handicap). As part of this rulemaking proceeding, LSC is convening a Rulemaking Workshop prior to the development of a Draft Notice of Proposed Rulemaking. The Rulemaking Workshop will be held on December 13, 2005, from 9 a.m.-5 p.m., EST, (and may be extended to December 14, 2005, if necessary). The Rulemaking Workshop will be held in LSC's Conference Center, on the 3rd floor of 3333 K St., NW., Washington, DC 20007.

Under the LSC Rulemaking Protocol:

Rulemaking Workshops [\* \* \*] enable LSC Board members and staff to meet with stakeholders prior to the development of a draft NPRM to discuss, but not negotiate, LSC rules and regulations. LSC believes the Notice and Comment process, including Rulemaking Workshops, [\* \* \*] allow for an effective dialog between LSC and its recipients and other interested parties, in those instances in which Negotiated Rulemaking is not used.

When the Board has decided to initiate a rulemaking and to conduct a Rulemaking Workshop, [LSC's Office of Legal Affairs] will work with the Board and staff to select a date for the Rulemaking Workshop and will invite participants from the interested stakeholder community. The Workshop will be a meeting at which the participants hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. The Workshop is not intended [to] develop detailed alternatives or to obtain consensus on regulatory proposals. Upon the conclusion of the Workshop, the Board shall provide LSC staff with policy guidance on the issues discussed to aid staff in the development of the Draft Notice of Proposed Rulemaking ("NPRM") 67 FR 69762, 69763 (November 19, 2002).

With this notice, LSC is inviting expressions of interest from the interested stakeholder community to participate in the Rulemaking Workshop. Expressions of interest should be forwarded in writing to Victor M. Fortuno, Vice President & General

Counsel, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007. Such expressions of interest may be alternatively sent via e-mail to [vfortuno@lsc.gov](mailto:vfortuno@lsc.gov) or via fax to (202) 337-6831, but must be received by close of business on November 18, 2005. LSC will select participants shortly thereafter and will inform all those who expressed interest of whether or not they have been selected.

The Workshops will be open to public observation but only persons selected will be allowed to participate. Participants are expected to cover their own expenses (travel, lodging, etc.). LSC may consider providing financial assistance to participants for whom travel costs would represent a significant hardship and barrier to participation. Any such person should so note in his/her expression of interest for LSC's consideration.

**Victor M. Fortuno,**

*Vice President & General Counsel.*

[FR Doc. 05-22289 Filed 11-8-05; 8:45 am]

**BILLING CODE 7050-01-P**

## DEPARTMENT OF DEFENSE

### 48 CFR Part 242

[DFARS Case 2003-D051]

#### Defense Federal Acquisition Regulation Supplement; Contract Administration Functions

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing functions performed by DoD contract administration offices. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 9, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D051, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Defense Acquisition Regulations Web site:* <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D051 in the subject line of the message.

○ *Fax:* (703) 602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Deborah Tronic, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, (703) 602-0289.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

○ Update the list of DoD contract administration functions to clarify responsibilities for payment administration and for verification of contractor compliance with earned value management system requirements;

○ Delete obsolete text on mobilization production planning surveys; and

○ Delete procedures for designation of contract payment offices. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at <http://www.acq.osd.mil/dpap/dars/pgi>.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a

substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule addresses internal DoD responsibilities for performance of contract administration functions. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D051.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.

### List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 242 as follows:

1. The authority citation for 48 CFR part 242 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Section 242.302 is revised to read as follows:

#### 242.302 Contract administration functions.

(a)(4) Also, review and evaluate—

(A) Contractor estimating systems (see FAR 15.407–5); and

(B) Contractor material management and accounting systems under Subpart 242.72.

(7) See 242.7503 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see 242.771–3(a).

(12) Also perform all payment administration in accordance with any applicable payment clauses.

(13)(A) Do not delegate the responsibility to make payments to the Defense Contract Management Agency (DCMA).

(B) Follow the procedures at PGI 242.302(a)(13)(B) for designation of payment offices.

(39) See 223.370 for contract administration responsibilities on contracts for ammunition and explosives.

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

(S–70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications and agreements with DoD EVMS processes, when authorized by the affected components.

(S–71) DCMA has responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with DoD EVMS criteria. The contracting officer shall not retain this function.

(b)(S–70) Issue, negotiate, and execute orders under basic ordering agreements for overhaul, maintenance, and repair.

[FR Doc. 05–22113 Filed 11–8–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AT92

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Endangered *Monardella linoides* ssp. *viminea* (Willow Monardella)

**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 endangered *Monardella linoides* ssp. *viminea* (willow monardella) under the Endangered Species Act of 1973, as amended (Act). We have determined that approximately 2,539 acres (ac) (1,028 hectares (ha)) of land within San Diego County, California, contain the physical and biological features essential to the conservation of *M. l. ssp. viminea*. Of that, we are proposing to designate as critical habitat approximately 115 acres (47 ha) of private lands and the Padre Dam Municipal Water District lands within the City of Santee. We do not include Tribal lands in this proposed designation. We are exempting or

considering whether to exclude from critical habitat designation the other lands that contain the features essential to the conservation of *M. l. ssp. viminea*. We fully discuss the exemption and exclusions under consideration in the preamble of this proposed rule. We are soliciting data and comments from the public on all aspects of this proposal, including the exemption and exclusions under consideration.

**DATES:** We will accept comments from all interested parties until January 9, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 27, 2005.

**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 Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (CFWO), 6010 Hidden Valley Road, Carlsbad, CA 92011.

2. You may hand-deliver written comments to the CFWO, at the address given above.

3. You may send comments by electronic mail (e-mail) to [fw8cfwomolivi@fws.gov](mailto:fw8cfwomolivi@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 760/431–9624.

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 CFWO at the above address. Maps showing areas proposed as critical habitat, areas under consideration for exclusion from critical habitat, and areas exempted from critical habitat are available for public review and comment at the CFWO or on the Internet at <http://carlsbad.fws.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, CFWO at the above address (telephone 760/431–9440; facsimile 760/431–9624).

#### 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 are particularly 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 *Monardella linoides* ssp. *viminea* habitat, and what areas should be included in the designations that were occupied at the time of listing that contain the features that are essential to the conservation of the species and why and what areas that were not occupied at the time of listing are 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) The exclusion from critical habitat that we are considering for lands within the San Diego MSCP and the BLM Otay Mountain Wilderness and the multiple agency 1994 MOU under section 4(b)(2) of the Act (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* for details, including maps, of the San Diego MSCP and Otay Mountain Wilderness and MOU). Please provide information on the benefits of including or excluding these lands from the critical habitat designation;

(5) The exemption from critical habitat at MCAS Miramar pursuant to section 4(a)(3) of the Act because their Integrated Natural Resources Management Plan (INRMP) provides a benefit to *M. l. ssp. viminea*. We specifically solicit comment concerning the exemption of MCAS Miramar under section 4(a)(3) of the Act and whether their INRMP provides a benefit to the species (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section for a detailed discussion and figure of the area).

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(7) 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 [fw8cfwomolivi@fws.gov](mailto:fw8cfwomolivi@fws.gov) in ASCII file format and avoid the use of

special characters or any form of encryption. Please also include "Attn: Willowy Monardella" 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 CFWO at phone number 760/431-9440. Please note that this Internet address will be closed 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 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 470 species, or 37.5 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat.

We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions against take of animal species and other unauthorized actions regarding plants, 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 for the conservation of many species.

We note, however, that the August 6, 2004 Ninth Circuit judicial opinion, (*Gifford Pinchot Task Force v. United States Fish and Wildlife Service*) found our definition of adverse modification was invalid. In response to the decision, the Director has provided guidance to the Service based on the statutory language. In this rule, our analysis of the consequences and relative costs and benefits of the critical habitat designation is based on application of the statute consistent with the 9th Circuit's ruling and the Director's guidance.

#### **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 (NOIs) 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

In this proposed rule, we discuss only those topics directly relevant to the designation of critical habitat. For more information on *Monardella linoides* ssp. *viminea*, refer to the final rule listing the species as endangered published in the **Federal Register** on October 13, 1998 (63 FR 54938).

### Life History

*Monardella linoides* ssp. *viminea* is a small perennial, herbaceous subshrub with aromatic foliage and several erect stems extending from a woody base (Munz 1968; 63 FR 54937). It is a member of the Lamiaceae (mint family) and flowers from June to August (Munz 1968). Because *M. l.* ssp. *viminea* branches arise from trailing stems, plants tend to grow in groupings or

"clumps," rather than as discrete plants (Epling 1925). Seeds are small with a hard seed coat and may fall directly below existing plants after setting (Mike Kelly, pers. comm. to Carolyn Lieberman, U.S. Fish and Wildlife Service, 2003). Little is known about how the species disperses, however, seeds and vegetative shoots are believed to be transported by flowing water (Mark Elvin, botanist, Dudek and Associates, pers. comm. to C. Lieberman, U.S. Fish and Wildlife Service, 2003).

*M. l.* ssp. *viminea* primarily inhabits coarse, rocky, sandy alluvium on terraces, benches, and stabilized sandbars along and within ephemeral drainages (Scheid 1985) in coastal sage scrub or riparian scrub habitat that is frequently associated with *Eriogonum fasciculatum* (California buckwheat), *Platanus racemosa* (sycamore), *Artemisia californica* (California sagebrush), and *Baccharis sarothroides* (coyotebush), and *Quercus agrifolia* (coast live oak) (Scheid 1985). These semi-open washes and drainage areas typically contain little to no canopy cover (Reiser 1994; 63 FR 54937) and are maintained by large intermittent water flows that erode and deposit alluvial material, developing benches and sandbars.

### Distribution and Status

The distribution of *M. l.* ssp. *viminea* is extremely restricted within San Diego County, California, and extends south to Baja California, Mexico (Scheid 1985). This narrow endemic plant persists in small isolated occurrences within a 72 square-mile (186 square-kilometer) area between Los Peñasquitos Canyon and Mission Gorge in San Diego County and in Otay Mesa and northern Baja California. The morphology of *M. l.* ssp. *viminea* differs between the populations bounded by the Los Peñasquitos Canyon and Mission Gorge region to the north and Otay Mesa and northern Baja California region to the south. These differences led Elvin and Sanders (2003) to propose the Otay Mesa and northern Baja California occurrences as a different taxon. The Service evaluated this information and concluded that the authors did not provide adequate evidence to elevate the Otay Mesa and northern Baja California occurrences to the species rank (Bartel and Wallace, *in litt.* 2004).

As stated in the 1998 listing rule, approximately 6,000 individuals of *M. l.* ssp. *viminea* from 20 occurrences were known to exist in the United States within the following canyons or geographic areas at the time the species was listed as endangered: MCAS

Miramar, Sycamore Canyon (partially on private land, partially on Federal land managed by the U.S. Navy, and partially on Sycamore Canyon City Park), Lopez Canyon (Los Peñasquitos City Regional Park), San Clemente Canyon (San Clemente Park), Cedar Canyon, and Marron Valley. Since *M. l.* ssp. *viminea* was listed, a population was found on BLM land on Otay Mountain.

We are currently aware of only 15 occurrences in the United States within the following canyons or geographic areas: MCAS Miramar (Rose Canyon, part of Sycamore Canyon, West Sycamore Canyon, part of Spring Canyon, San Clemente Canyon, Elanus Canyon (MCAS Miramar 2002)), part of Sycamore Canyon on private property and Sycamore Canyon City Park, Cedar Canyon (now referred to as Otay Lakes), Lopez Canyon (Los Peñasquitos City Regional Park), Marron Valley, and Otay Mountain.

The remaining six occurrences are believed to have been extirpated after the species was listed in 1998:

The Carroll Canyon occurrence (California Natural Diversity Data Base (CNDDDB) occurrence number 25): this occurrence is comprised of 122 clumps, was collected as mitigation for the Carroll Canyon Business Park project in 2003 to prevent their destruction during the project's construction. Of these 122 clumps, 30 are being held at the Rancho Santa Ana Botanic Garden as live material. Others will be reintroduced back into suitable sites in Carroll Canyon, at a robust historical population site at San Clemente Canyon, and/or in Lopez Canyon next to existing populations. The exact location where *M. l.* ssp. *viminea* will be reintroduced will depend on the results of genetic testing to determine the genetic similarity of the donor population with any population in which it may interact.

The three San Clemente Canyon occurrences on City of San Diego Park land (CNDDDB occurrence numbers 11, 16, and 17): These three occurrences of *M. l.* ssp. *viminea* historically occurred in the upper portion of the canyon at MCAS Miramar, and in the lower portion of the canyon west of Interstate 805 in the City of San Diego's Marian Bear Natural Park. These occurrences within this park are believed to have been extirpated due to construction of Highway 52, development within its watershed resulting in conversion of the occupied stream from ephemeral to perennial (Sherman 2003), and an increase in nonnative invasive species.

The two occurrences within Murphy Canyon (CNDDDB occurrence numbers

15, and 30) (CNDDDB 1997; CNDDDB 2001; 63 FR 54937): These occurrences have not had any live standing plants since 2002, and we do not know if suitable habitat remains here but they are believed to be extirpated (JoEllan Kassebaum, Botanist, MCAS Miramar, pers. com. to Bridgette Tuerler, Service 2005).

*Monardella linoides* ssp. *viminea* was also known from Cemetery Canyon, Beeler Canyon (near Poway), and Switzer Canyons but is believed to have been extirpated from these areas prior to listing (CNDDDB 2001; Elvin and Sanders 2003).

Methods to survey *Monardella linoides* ssp. *viminea* vary because it

tends to grow in groupings (referred to as clumps) rather than as discrete plants, making it difficult to compare the numbers of individuals counted between different surveys. Surveys have counted individual plants, clumps of individual plants, and/or colonies (see Table 1 for details).

TABLE 1.—SURVEY DATA FOR EXTANT OCCURRENCES OF MONARDELLA LINOIDES SSP. VIMINEA AT VARIOUS LOCATIONS OVER TIME, FROM PRE-2000 TO 2004

[Years for which we have no data are represented as “ND” and years for which we have no specific abundance data, only positive survey data, are represented as “occupied”]

Geographic area	Ownership	Date					
		Pre-2000	2000	2001	2002	2003	2004
(1) Sycamore Canyon .....	MCAS Miramar .....	383 plants <sup>13</sup> ..	ND* .....	ND .....	446 clumps <sup>8</sup> ..	ND .....	ND.
	Private .....	Occupied** <sup>7</sup> ..	262 clumps <sup>2</sup> ..	170 clumps <sup>3</sup> ..	128 plants <sup>4</sup> ....	85 clumps (390 plants) <sup>5</sup> .	93 clumps (354 plants). <sup>6</sup>
(2) West Sycamore Canyon ..	MCAS Miramar .....	1376 plants <sup>13</sup> ; 650 colonies in 1987 <sup>10</sup> .	907 clumps <sup>9</sup> ..	ND .....	1,737 plants (132 clumps) <sup>8</sup> .	ND .....	ND.
	City of San Diego .....	Occupied <sup>7</sup> .....	12 clumps. <sup>12</sup> ..	ND .....	ND .....	ND .....	ND.
	Private .....	ND .....	ND .....	ND .....	ND .....	0 clumps, previously 23 clumps. <sup>11</sup> .	ND.
(3) Spring Canyon .....	MCAS Miramar .....	185 clumps in 1994 <sup>10</sup> .	ND .....	ND .....	549 plants (80 clumps) <sup>8</sup> .	ND .....	ND.
	Private (East Elliot) .....	ND .....	133 clumps <sup>2</sup> ..	ND .....	ND .....	ND .....	ND.
(4) San Clemente Canyon .....	MCAS Miramar .....	Occupied <sup>7</sup> .....	343 clumps <sup>9</sup> ..	ND .....	503 plants (83 clumps) <sup>8</sup> .	ND .....	ND.
(5) Elanus Canyon .....	MCAS Miramar .....	10 clumps or individuals <sup>10</sup> .	9 clumps <sup>9</sup> .....	ND .....	13 plants (2 clumps) <sup>8</sup> .	ND .....	ND.
(6) Lopez Canyon .....	City of San Diego (Los Peñiquitos City Regional Park).	60 plants in 1980 <sup>1</sup> , 12 clumps in 1994, 8 clumps in 1997 <sup>1</sup> , 35 plants in 1987 <sup>1</sup> .	8 clumps <sup>2</sup> .....	8 clumps <sup>3</sup> .....	44 plants <sup>4</sup> ....	8 clumps (82 plants) <sup>5</sup> .	8 clumps (82 plants). <sup>6</sup>
(7) Marron Valley .....	City of San Diego & State (CDF).	60 plants in 1992 <sup>14</sup> .	42 clumps <sup>2</sup> ....	66 clumps <sup>3</sup> ....	98 plants <sup>4</sup> ....	83 clumps (192 plants) <sup>5</sup> .	70 clumps (113 plants). <sup>6</sup>
(8) Otay Lakes (also referred to as Cedar Canyon).	State (CDFG) .....	200 plants in 1989 <sup>10</sup> .	Occupied <sup>7</sup> .....	ND .....	4 clumps <sup>12</sup> ....	ND .....	ND.
	City of San Diego .....	ND .....	2 clumps <sup>2</sup> .....	2 clumps <sup>3</sup> .....	2 plants <sup>4</sup> .....	ND .....	2 plants <sup>6</sup> .
	Private .....	ND .....	ND .....	25 plants <sup>12</sup> ..	ND .....	ND .....	ND.
(9) Rose Canyon .....	MCAS Miramar .....	Occupied <sup>7</sup> .....	ND .....	ND .....	4 plants (2 clumps) <sup>8</sup> .	ND .....	ND.
(10) Otay Mountain .....	Federal (BLM) .....	ND .....	202 clumps <sup>2</sup> ..	ND .....	ND .....	ND .....	ND.

(Marine Corps Air Station (MCAS); California Department of Fish and Game (CDFG); Bureau of Land Management (BLM); California Department of Forestry (CDF)).

\*ND = Years for which we have no data.

\*\*Occupied = Years for which we have no specific abundance data, only positive survey data.

<sup>1</sup> Kelly and Burrascano 2001.

<sup>2</sup> City 2000.

<sup>3</sup> City 2001.

<sup>4</sup> City 2002.

<sup>5</sup> City 2003.

<sup>6</sup> City 2004.

<sup>7</sup> GIS data layer from MCAS (No Date).

<sup>8</sup> MCAS Miramar 2002.

<sup>9</sup> Service 2000.

<sup>10</sup> CNDDDB 2001.

<sup>11</sup> Helix Environmental Planning, Inc. 2004.

<sup>12</sup> Sherman 2003.

<sup>13</sup> GIS data layer from MCAS (unknown, but before 1998).

<sup>14</sup> MSCP GIS layer from San Diego Association of Governments.

As stated in the final listing rule, threats to *Monardella linoides* ssp. *viminea* include habitat alteration resulting from urban development, sand and gravel mining, off-road vehicle (ORV) activities, trampling, trash dumping, erosion, and invasion of

nonnative species (October 13, 1998; 63 FR 54938).

Due to its small population sizes and numbers, *M. l.* ssp. *viminea* is potentially threatened with stochastic (random) extinction (Service 1995). Chance events (e.g., floods, fires, or

drought) can substantially reduce or eliminate local populations and increase the likelihood of the plant's extinction. Major flood events can physically wash away individual plants and existing habitat (Kelly and Burrascano 2001). *M. l.* ssp. *viminea* had likely adapted to a

natural fire regime since fires maintain open and available habitat necessary for *M. l. ssp. viminea*. Alternatively, disruptions to natural fire cycles may be detrimental to *M. l. ssp. viminea* because excessive fuel build up may cause hotter fires than those to which *M. l. ssp. viminea* has become adapted. Fire has resulted in loss of *M. l. ssp. viminea* individuals on Otay Lakes lands, although it was recently verified that surviving individuals still occur in this area (Sherman 2003) and on MCAS Miramar. Drought has reduced population size within Sycamore Canyon (City 2002). Herbivory by unchecked populations of native rabbits and deer also has been identified as a threat to populations of *M. l. ssp. viminea* (Kelly and Burrascano 2001).

#### Previous Federal Actions

Please see the final rule listing *Monardella linoides* ssp. *viminea* as endangered for a description of previous Federal actions up to the time of listing on October 13, 1998 (63 FR 54938). In the final listing rule, the Service determined designation of critical habitat was not prudent because such designation would not benefit the species and could increase the threat of illegal collection.

On September 26, 2001, a lawsuit was filed against the Department of the Interior (DOI) and the Service by the California Native Plant Society (CNPS) alleging, in part, that the Service improperly determined that designation of critical habitat for *Monardella linoides* ssp. *viminea* was not prudent (CNPS v. Norton, No. 01–CV–1742IEG (JAH)). The Service entered into a settlement agreement with the plaintiffs, under which we agreed to reconsider our “not prudent” finding, publish a proposed critical habitat rule for *M. l. ssp. viminea* in the **Federal Register**, if prudent, on or before October 30, 2005, and publish a final critical habitat rule, if prudent, on or before October 30, 2006. This proposed rule complies with the June 2, 2003 settlement agreement.

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial

to the species. In our October 13, 1998, final rule (63 FR 54938), we determined that designation of critical habitat would provide little conservation benefit over that provided by listing. We determined that designation of critical habitat was not prudent based on the increased threat of collection and vandalism and stated that designation of critical habitat could lead to increased publicity, illegal collection, and trampling of plants by individuals interested in seeing rare plants.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii v. Babbitt*, the United States District Court for the District of Hawaii ruled that the Service could not rely on the “increased threat” rationale for a “not prudent” determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council v. U.S. Department of the Interior*, the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the “increased threat rationale,” the threat against the benefit to the species of designating critical habitat (113 F. 3d 1121, 1125 [9th Cir. 1997]).

At this time, we do not have specific evidence for overcollection or vandalism specific to this plant and its habitat. The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a “not prudent” finding (*Conservation Council for Hawaii v. Babbitt* 2 F. Supp. 2d 1280). We are already working with Federal, State of California, County of San Diego, and City of San Diego agencies and organizations in carrying out conservation activities for this plant and conducting surveys for additional occurrences of the species and to assess habitat conditions. These entities are fully aware of the distribution, status, and habitat requirements for this plant. We have reconsidered our evaluation of the threats posed by collection and vandalism in the prudency determination. We have determined that the threats to *Monardella linoides* ssp. *viminea* from specific instances of collection vandalism are speculative. Accordingly, we withdraw our previous determination that the designation of critical habitat is not prudent for *M. l. ssp. viminea*. Therefore, we determine

that the designation of critical habitat is prudent for *M. l. ssp. viminea*. At this time, we have sufficient information necessary to identify specific features as essential to the conservation of *M. l. ssp. viminea* and are therefore, proposing critical habitat (see “Methods” section below for a discussion of information used in our reevaluation). In total, we have determined that approximately 2,539 acres (ac) (1,028 hectares (ha)) of land within San Diego County, California, contain the primary constituent elements essential to the conservation of *M. l. ssp. viminea*.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical 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 geographical 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. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing 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 may also be excluded from critical habitat pursuant to section 4(b)(2)). With regard to areas not known to be occupied by the species at the time of listing, we will designate such areas when the best available scientific data indicates that the conservation needs of the species so require.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat

designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted 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 section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Monardella linoides* ssp. *viminea*. Information sources included data from research and survey observations published in peer-reviewed articles; survey reports submitted as requirement of obtaining a section 10(a)(1)(A) permit; regional Geographic Information System (GIS) data from the San Diego Multiple Species Conservation Program (MSCP), soil, and species coverages (including layers for the City of San Diego and MCAS Miramar); and data compiled in the California Natural Diversity Data Base (CNDDB). We have also reviewed available information that pertains to the habitat requirements of this species. The material included data in reports submitted during section 7 consultations; research published in peer-reviewed articles and agency reports; and, regional GIS coverages. We are not proposing critical habitat in areas outside the geographical area occupied at the time of listing. The Otay Mountain population, discovered after the publication of the final listing rule, is approximately 4.75 miles (7.6 kilometers) west of the known population at Marron Valley. We consider the Otay Mountain occurrence to be a confirmation of the distribution of *M. l.* ssp. *viminea* within southern San Diego County. We are considering whether to exclude the Otay Mountain population from critical habitat in the final rule, as discussed below in the Exclusions section of this proposed rule.

We have reviewed and used the best available information about known occurrences and habitat requirements of *Monardella linoides* ssp. *viminea*. We

delineated the boundaries of habitat containing features essential to the conservation of species by outlining the local drainage area from the upper-to the lower-most occurrence point within each occupied drainage area following topographic lines on USGS topographical maps. The majority of the occurrence points are based on data collected in 1998 and 2002 and were used to delineate the up- and down-stream boundaries of habitat containing features essential to the conservation of species within each drainage.

These areas were further refined by gathering information about these areas with Service biologists and other knowledgeable individuals familiar with *Monardella linoides* ssp. *viminea* and their habitat. After creating GIS coverage of the areas containing features essential to the conservation of species, we created legal descriptions using a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the area proposed as critical habitat.

#### 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 data available and to consider those physical and biological features (primary constituent elements (PCEs)) 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 specific PCEs required for *Monardella linoides* ssp. *viminea* are derived from the biological needs of the species as described below and in the final listing rule for *M. l.* ssp. *viminea* (October 13, 1998; 63 FR 54937).

#### Space for Individual and Population Growth and Normal Behavior

Open or semi-open rocky, sandy alluvium on terraced floodplains, benches, stabilized sandbars, channel banks, and sandy washes along ephemeral streams, washes, and

floodplains are needed for individual and population growth of *Monardella linoides* ssp. *viminea* (October 13, 1998; 63 FR 54938) (PCE 1). *M. l. ssp. viminea* in the Otay Lakes/Marron Valley area also occur in cracks of bedrock of ephemeral drainages. While little is known about the space needed for reproduction, flowing water appears to be important for transporting seeds and vegetative shoots (Mark Elvin, botanist, Dudek and Associates, pers. comm. to C. Lieberman, U.S. Fish and Wildlife Service, 2003). Animals may also be important for seed dispersal. We are unaware of any studies documenting specific pollinators of *M. l. ssp. viminea*; however, the floral structure suggests insect pollination. Intermittently flooded areas are dynamic such that the stream path and the location of benches and sandbars along the shoreline may change depending on seasonal water flows. Therefore, the riparian corridor where *M. l. ssp. viminea* is found is an integral part of and important for providing space for growth and reproduction within this dynamic ecosystem.

#### Water and Physiological Requirements

A natural hydrologic regime that includes intermittent flooding during the rainy season is needed to maintain washes and sandbars where *Monardella linoides* ssp. *viminea* grows (PCE 2) (October 13, 1998; 63 FR 54938). Large intermittent water flows resulting from seasonal rains and major flooding events erode and deposit alluvial material, developing benches and sandbars used by *M. l. ssp. viminea*. These seasonal rains and intermittent flooding events may also be important for transporting seeds and vegetative shoots as stated above and are needed to maintain the open or semi-open riparian areas with little or no canopy cover needed to ensure that the species receives adequate sunlight for nutrient uptake (photosynthesis) (PCE 3).

#### Primary Constituent Elements for *Monardella linoides* ssp. *viminea*

Based on our current knowledge of the life history, biology, and ecology of the species and the habitat requirements to sustain the essential life history functions of the species, we have determined that the PCEs essential for the conservation of *Monardella linoides* ssp. *viminea* are:

(1) Coarse, rocky, sandy alluvium on terraced floodplains, benches, stabilized sandbars, channel banks, and sandy washes along and within the ephemeral drainages that provide space for growth, reproduction, and dispersal;

(2) Ephemeral drainages where water flows only after peak seasonal rains and major flooding events and periodically scours riparian vegetation and redistributes alluvial material by eroding and developing stream channels, benches, and sandbar and thus maintains necessary dynamic habitat processes for the species; and

(3) Coastal sage and riparian scrub with an open and semi-open canopy and little or no herbaceous understory situated along ephemeral drainages and adjacent floodplains to ensure that the subspecies receives adequate sunlight for nutrient uptake for photosynthesis.

#### Criteria Used to Identify Critical Habitat

We are proposing to designate critical habitat on lands that were known to be occupied at the time of listing and contain the PCEs for *Monardella linoides* ssp. *viminea*. We used the following criteria to identify these areas: (1) Areas known to be occupied at the time of listing and/or known to be currently occupied; and (2) ephemeral washes and drainage areas associated with documented occurrences.

These areas were then analyzed with respect to special management considerations or protections. Subsequently, we identified areas we are exempting from critical habitat designation based on provisions of section 4(a)(3) of the Act and other areas we are considering excluding from critical habitat based on the provisions of section 4(b)(2) of the Act.

Using the above criteria, we identified 10 areas that contain features essential to the conservation of *M. l. ssp. viminea*, one in each of the following canyons/geographic areas: (1) Sycamore Canyon, (2) West Sycamore Canyon, (3) Spring Canyon, (4) San Clemente Canyon, (5) Elanus Canyon, (6) Lopez Canyon, (7) Marron Valley, (8) Otay Lakes (also known as Cedar Canyon), (9) Otay Mountain, and (10) Rose Canyon (MCAS Miramar). All 10 areas, except Otay Mountain, were known to be occupied at the time of listing, and all 10 areas, including Otay Mountain, are currently known to be occupied.

When mapping proposed critical habitat boundaries, we made every effort to remove all lands containing developed areas such as buildings, paved areas, boat ramps and other structures that lack PCEs for *Monardella linoides* ssp. *viminea*. Any lands containing such structures that could not be removed from the maps, due to the mapping scale used, are excluded by this text from critical habitat. Therefore, Federal actions limited to these lands would not trigger section 7

consultations, unless they affect the species and/or PCEs in adjacent critical habitat.

#### Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing that contain one or more PCEs may require special management considerations or protections.

As stated in the final listing rule, threats to *Monardella linoides* ssp. *viminea* include habitat alteration resulting from urban development, sand and gravel mining, off-road vehicle (ORV) activities, trampling, trash dumping, erosion, and invasion of nonnative species (October 13, 1998; 63 FR 54938). These activities could impact the PCEs determined to be essential for conservation of *M. l. ssp. viminea*.

Urban development and sand and gravel mining upstream of *Monardella linoides* ssp. *viminea* occurrences may alter the hydrologic regime needed to maintain the habitat characteristics required by *M. l. ssp. viminea*. Conversion of intermittent water flows to persistent water flows may increase scour and erode terraces and benches, washing away rooted plants and reducing available habitat (PCEs 1 and 2). Kelly and Burrascano (2001) attribute disappearance of terraces in Lopez Canyon to increased erosion associated with urban runoff from upstream development. Water diversion, such as water removal from the drainage system occupied by the subspecies could reduce the amount of water flowing downstream following seasonal flooding events resulting in decreased deposition of alluvial material and a subsequent reduction in the amount of available habitat (PCEs 1 and 2). Disruption of the hydrologic cycle could also result in a decrease in the number of seeds that could have been transported downstream during seasonal flooding events, thereby, fragmenting populations (PCE 2). The use of pesticides or herbicides in residential and commercially landscaped areas within the watershed may impact water quality if used upslope or above a stream (PCE 2). Special management such as bank replacement or stabilization to maintain the substrate, restoration of intermittent water flows, erosion and runoff control measures, and prohibitions against grading during the rainy season may be required to reduce impacts to *M. l. ssp. viminea* habitat resulting from alteration of the hydrologic regime due to development within the local watershed.

Alteration of the hydrologic regime also can result in an increase in native and nonnative plant species invading the riparian areas where *M. l. ssp. viminea* occurs. Increased water flow associated with urban runoff has led to dense stands of riparian vegetation in the upper reaches of Lopez Canyon where *M. l. ssp. viminea* once occurred (Kelly and Burrascano 2001). Increases in riparian vegetation within ephemeral drainages may also be responsible for losses of *M. l. ssp. viminea* in lower San Clemente Canyon. Conversely, decreased water availability may result in conversion of habitat from mesic to xeric, adversely impacting *M. l. ssp. viminea*. More drought tolerant plants could expand into *M. l. ssp. viminea* habitat and create unnaturally high canopy cover or dense riparian vegetation that could crowd *M. l. ssp. viminea* out or render the habitat unsuitable by creating excessive shading (PCE 3). Special management may be required to remove invasive species to maintain an open or semi-open canopy of coastal sage and riparian scrub with minimal herbaceous understory

required by *M. l. ssp. viminea* for persistence (PCE 3).

Human use (e.g., ORV activities and trampling) along streams can change the character of the riparian area and associated vegetation in ways that make portions of the riparian corridor less suitable as habitat for *M. l. ssp. viminea*. For example, heavy trampling may erode or denude stream banks and washes, thereby, reducing or eliminating available habitat (PCE 1). Special management such as bank replacement or stabilization to maintain the substrate and prohibitions against ORV use during the rainy season may be required to reduce impacts to *M. l. ssp. viminea* habitat resulting from human use within the local watershed.

#### Proposed Critical Habitat Designation

As stated above, we identified 10 canyons/geographic areas containing habitat with features essential to the conservation of this species. We are proposing critical habitat within a portion of Sycamore Canyon (Unit 1) within the City of Santee. We are exempting under section 4(a)(3) of the Act, all lands within MCAS Miramar

(Rose Canyon and portions of San Clemente Canyon, Elanus Canyon, Spring Canyon, West Sycamore Canyon, and Sycamore Canyon) from this critical habitat designation. We are also considering excluding from this critical habitat designation a portion of Sycamore Canyon and all of West Sycamore Canyon, Spring Canyon, San Clemente Canyon, Elanus Canyon, Lopez Canyon, Marron Valley, Otay Lakes, and Otay Mountain under section 4(b)(2) of the Act. Table 2 below provides approximate area (ac/ha) of lands being proposed as critical habitat for *M. l. ssp. viminea* and information about landownership within this unit.

The proposed critical habitat unit described below constitutes our best assessment at this time of those areas determined to be occupied at the time of listing that contain one or more PCEs essential to the conservation of the *Monardella linoides ssp. viminea* that may require special management. A brief description of the proposed critical habitat unit and reasons why this unit is essential for the conservation of *M. l. ssp. viminea* is presented below.

TABLE 2.—OWNERSHIP AND APPROXIMATE AREAS (AC/HA) PROPOSED AS CRITICAL HABITAT FOR MONARDELLA LINOIDES SSP. VIMINEA

Unit	Ownership	Proposed critical habitat acres (ac) (hectares (ha))
Unit 1: Sycamore Canyon .....	Private ..... Water District ..... Total .....	114 ac (46 ha). 1 ac (1 ha). 115 ac (47 ha)

#### Unit Description

*Unit 1: Sycamore Canyon: (115 ac (47 ha))*

Sycamore Canyon area supports one of the largest occurrences of *Monardella linoides ssp. viminea* (CNDDDB 2001) and was known to be occupied at the time of listing and is currently known to be occupied (Table 1). Lands in Unit 1 contain one or more of the PCEs identified for *M. l. ssp. viminea*. This unit is important for the conservation of *M. l. ssp. viminea* because it represents one of the ten canyons/geographic areas in San Diego County that support this species and one of only 14 occurrences of this *M. l. ssp. viminea*. Given the restricted range and low numbers of occurrences, this unit is essential to minimize the risk of extinction from random events and urban development.

Approximately 114 ac (46 ha) in Unit 1 are private lands and located within the City of Santee on lands being proposed for the Fanita Ranch

development project. Fanita Ranch is currently developing a habitat conservation plan that will serve as the foundation for the City of Santee's subarea plan under the MSCP. In the future, we may consider excluding Fanita Ranch from critical habitat designation based on a pending or approved HCP that provide benefits for *M. l. ssp. viminea* or an approved conservation agreement between the Service and Fanita Ranch that provides assurances of the conservation measures that Fanita Ranch will undertake to protect and manage for *M. l. ssp. viminea* on their lands. Fanita Ranch has provided the Service with a letter that expressed their interest in working together to prepare a conservation agreement for *M. l. ssp. viminea* that would provide the basis for excluding their lands from designation under section 4(b)(2) of the Act.

Likewise, approximately 1 ac (1 ha) in Unit 1 is on lands owned by the Padre Dam Municipal Water District. This

water district, along with Helix Water District, Santa Fe Irrigation District, and Sweetwater Authority, is developing a multiple species habitat conservation plan under section 10(a)(1)(B) of the Act. We published a notice of intent to prepare an environmental impact statement/environmental impact report for a Natural Communities Conservation Plan and HCP on February 4, 2005 (February 4, 2005; 70 FR 6033). In the future, we may consider excluding Padre Dam Municipal Water District from critical habitat designation based on a pending or approved HCP that provide benefits for *M. l. ssp. viminea* or an approved conservation agreement between the Service and Padre Dam Municipal Water District that provides assurances of the conservation measures that Padre Dam Municipal Water District will undertake to protect and manage for *M. l. ssp. viminea* on their lands.

Habitat with features essential to the conservation of *M. l. ssp. viminea* on

private and Padre Dam Municipal Water District lands in Unit 1 may require special management to minimize impacts by nonnative invasive weeds, fire, indirect and direct effects of development, including altered hydrology, and recreational activities.

### 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. 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." We are currently 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. 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)). Until such a time as a proposed designation is finalized, any reasonable and prudent alternatives or reasonable and prudent measures included 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 their 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.

Federal activities that may affect the *Monardella linoides* ssp. *viminea* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers 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), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded,

authorized, or permitted do not require section 7 consultation.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of *M. l. ssp. viminea*. In some cases, the PCEs exist as a result of ongoing federal actions. As a result, ongoing federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

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 may also jeopardize the continued existence of the *M. l. ssp. viminea*. Federal activities that, when carried out, may adversely affect critical habitat for the *M. l. ssp. viminea* include, but are not limited to:

(1) Actions that would significantly alter the natural hydrologic pattern of intermittent flows and peak seasonal flooding necessary to support *Monardella linoides* ssp. *viminea*. These activities could include Federal authorization for urban and agricultural development in the watershed that changes the amount, timing, frequency, and magnitude of stream flows. Increased and/or more frequent water flows associated with urban runoff could lead to dense stands of riparian vegetation that may out-compete *M. l. ssp. viminea*. Changes in the magnitude of seasonal flooding may increase scouring and erosion of terraces, banks, and benches and thereby reduce the quality and availability of suitable soils and habitat. Conversely, reduced water flow could result in more xeric conditions that would limit plant growth and reproduction and thereby allowing more drought tolerant plants to compete with *M. l. ssp. viminea*.

(2) Actions that would remove alluvium from stream channels or change the physical structure of the stream channel by altering floodplains, benches, sand bars, and stream channels from sand and gravel mining, stream channelization, flood channel management, highway construction, and dredging. Federal authorization for projects that physically alter the stream channel may remove suitable alluvium from stream channels and result in the loss and degradation of habitat for *M. l. ssp. viminea*.

*Application of Section 4(a)(3) and Possible Exclusions Under Section 4(b)(2) of the Act*

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographical area occupied by the species at the time of listing 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 or protection. Therefore, areas within the geographical area occupied by the species at the time of listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographical area occupied by the species at the time of listing that do not require special management or protection 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 two criteria: (1) The plan provides management, protection or enhancement to the PCEs at least equivalent to that provided by a critical habitat designation; and (2) the Service has reasonable expectation the management, protection or enhancement actions will continue for the foreseeable future.

Section 318 of fiscal year 2004 the National Defense Authorization Act (Pub. L. 108–136) amended the Endangered Species Act to address the relationship of Integrated Natural Resources Management Plans (INRMPs) to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service 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 the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

Further, section 4(b)(2) of the Act states that critical habitat shall be

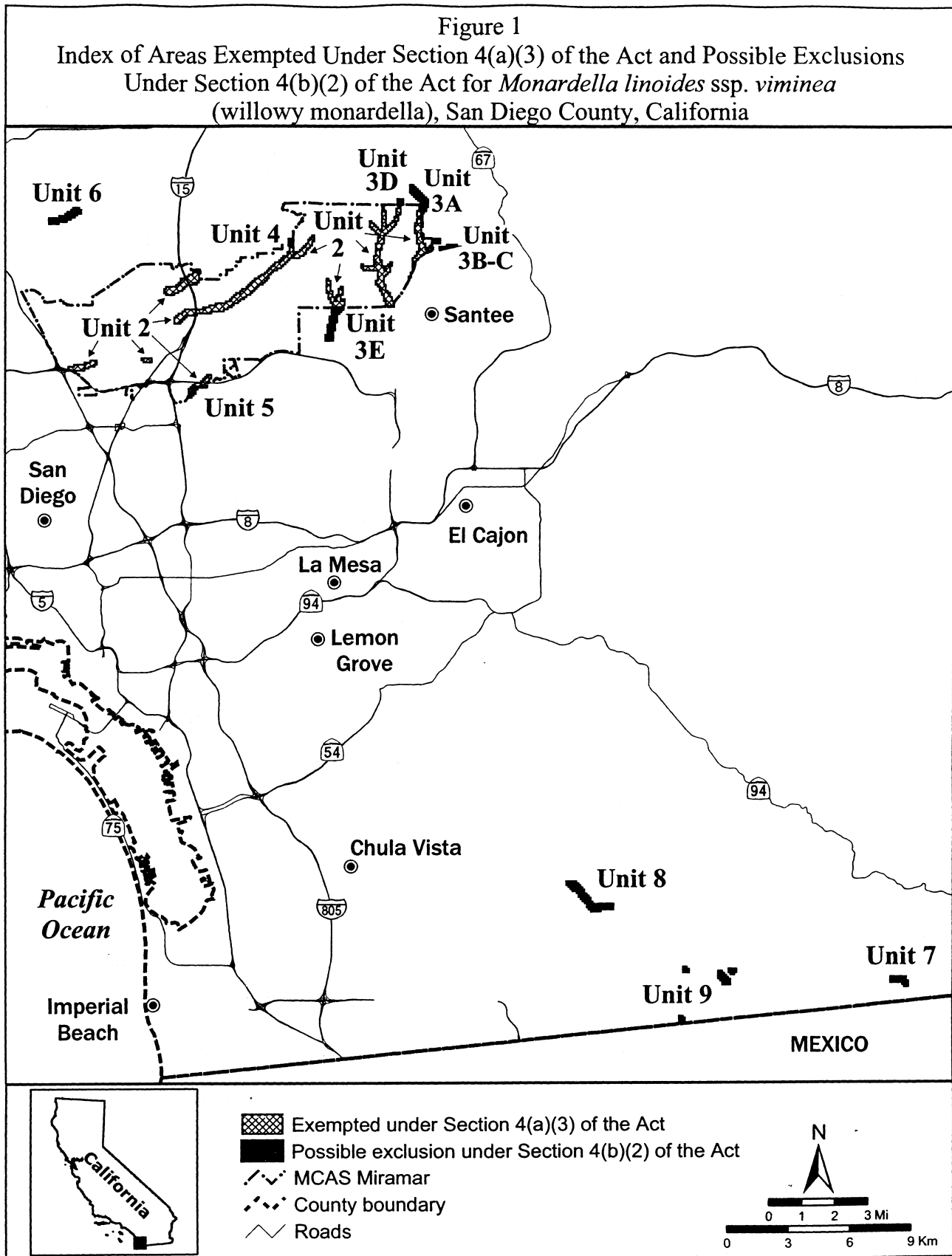
designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined 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.

For our critical habitat designations, we use the provisions outlined in sections 3(5)(A), 4(a)(3) and 4(b)(2) of the Act to evaluate those specific areas that we consider proposing as critical habitat. Lands we have found that do not meet the definition of critical habitat under section 3(5)(A) or that we are considering excluding pursuant to section 4(b)(2) include those covered by legally operative HCPs that cover the species.

The following index figure provides an overview of the areas we are exempting under section 4(a)(3) of the Act and considering excluding under section 4(b)(2) of the Act from critical habitat.

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*Relationship of Critical Habitat to Military Lands—Application of Section 4(a)(3)*

As discussed above, under section 4(a)(3) of the Act, the Secretary is prohibited from designating as critical habitat any Department of Defense lands or other geographical areas that are subject to an INRMP if the Secretary has determined in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. In order to qualify for this exemption, an INRMP must be found to provide a benefit to the species in question. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the military installation, including conservation provisions for listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. Habitat on military installations with completed and approved INRMPs that provide a benefit to the species are exempt from designation as critical habitat pursuant to section 4(a)(3)(B).

We believe that the INRMP for MCAS Miramar provides a benefit for *Monardella linoides* ssp. *viminea*. Therefore, we are exempting MCAS Miramar from critical habitat designation under section 4(a)(3) of the

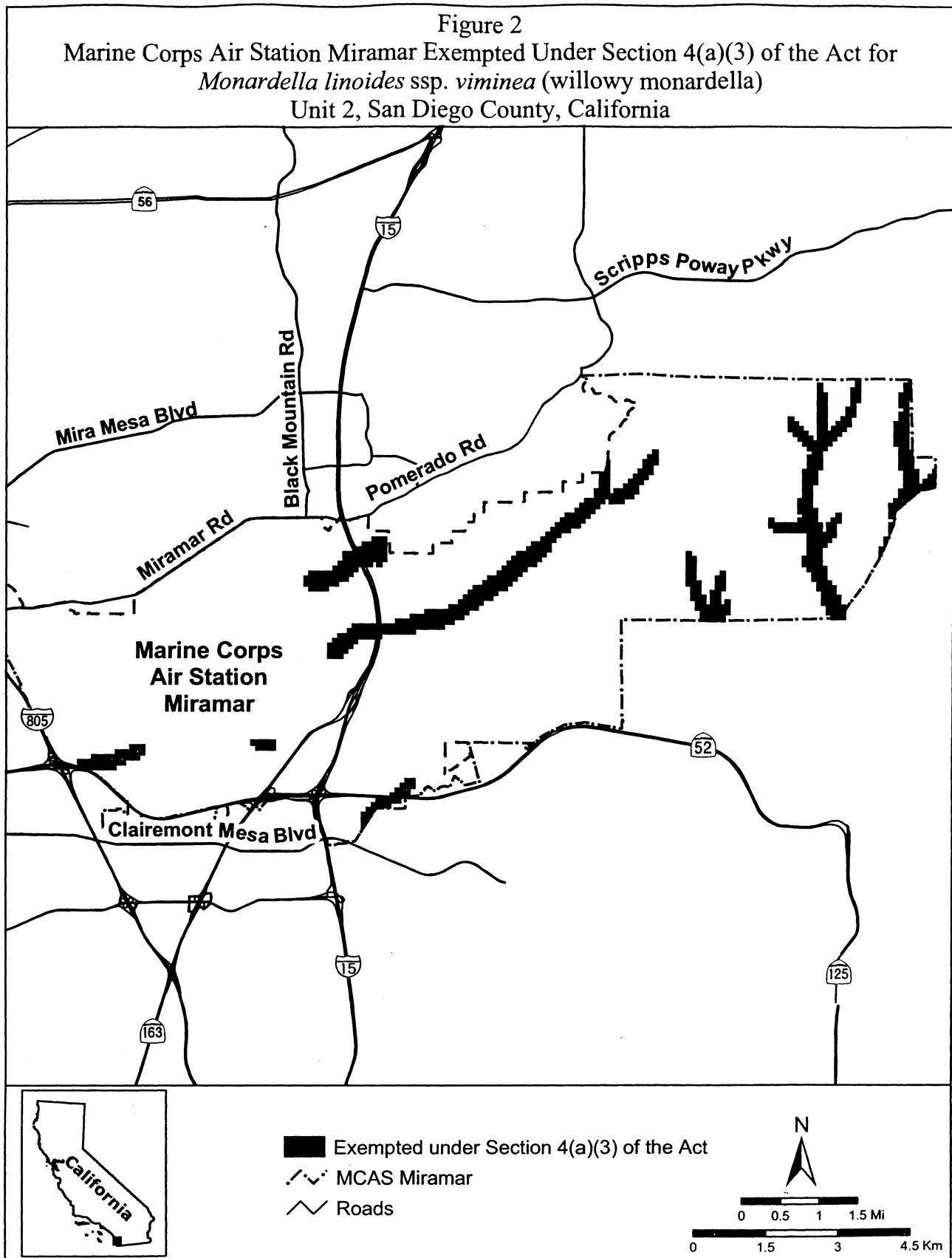
Act based on the legally operative INRMP for this station (Unit 2). Through our process of identifying areas that contain features essential to the conservation of *M. l. ssp. viminea*, we found that 1,863 ac (754 ha) on MCAS Miramar contain the features that are essential to the conservation of *M. l. ssp. viminea*. MCAS Miramar, which contains a large majority of the mapped *M. l. ssp. viminea* occurrences in the United States, has developed and is currently implementing their INRMP for the Station. The INRMP identifies management areas for specific endangered species, including *M. l. ssp. viminea*. The INRMP integrates current and future land use activities at MCAS Miramar with natural resources management and conservation. Chapter 7 of the INRMP outlines objectives and planned activities for the Station. High priority planned activities include management of wetlands and their associated watersheds to maintain no-net-loss of wetland values as well as management of special status species, including *M. l. ssp. viminea*. Over 99 percent of *M. l. ssp. viminea* populations within MCAS Miramar are protected within specific management areas (Dames and Moore 2000). Specific measures, such as management and monitoring of sensitive biological resources, apply to these management areas. Future development projects within MCAS Miramar should avoid these management areas. The U.S. Marines have initiated long-term monitoring and management of *M. l. ssp. viminea* on MCAS Miramar (San Diego Natural History Museum 2002). The U.S. Marines conducted baseline

surveys for *M. l. ssp. viminea* during the spring of 2002. Any future projects on the station that may affect *M. l. ssp. viminea* will be subject to consultation between MCAS Miramar and the Service under section 7 of the Act. We therefore believe that the ongoing protection, management and monitoring of *M. l. ssp. viminea* provided under the MCAS Miramar INRMP provides a benefit to the species. Therefore, we are exempting MCAS Miramar lands from critical habitat designation under Section 4(a)(3) of the Act.

The U.S. Marine Corps is currently working on a draft version of their update of this INRMP which further addresses management and conservation of *Monardella linoides* ssp. *viminea*. This updated plan includes detailed mapping of *M. l. ssp. viminea*, places 99 percent of the point occurrences in areas that focus on natural resource management referred specifically to as “Level Two Management Areas,” and outlines specific projects that will be funded to aid in the conservation of *M. l. ssp. viminea* (pers. comm. David Boyer, Director, Natural Resources Division, Environmental Management Department, MCAS Miramar to Jonathan Snapp-Cook, Fish and Wildlife Biologist, Service, October 4, 2005). The updated INRMP will provide additional benefits to *M. l. ssp. viminea*.

The following figure shows the areas of MCAS Miramar that we are exempting from critical habitat designation under section 4(a)(3) of the Act:

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### Relationship of Critical Habitat to Habitat Conservation Plans—Possible Exclusions Under Section 4(b)(2) of the Act

#### *San Diego Multiple Species Conservation Program (MSCP)*

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 available after taking into consideration the economic impact, impact on national security, 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 such exclusion outweigh the benefits of specifying the area as critical habitat, unless the failure to designate such area will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, impacts on national security, or other relevant impacts such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

Below, we first provide some general background information on the San Diego MSCP, followed by an analysis pursuant to section 4(b)(2) of the Act of the benefits of including San Diego MSCP lands within the critical habitat designation, an analysis of the benefits of excluding these lands, and an analysis of why we believe the benefits of exclusion are greater than those of inclusion. Finally, we provide a determination that exclusion of these lands would not result in extinction of *Monardella linoides* ssp. *viminea*.

We are considering excluding from critical habitat designation approximately 494 ac (200 ha) of non-Federal lands within the City of San Diego subarea plan and the County of San Diego subarea plan of the San Diego MSCP under section 4(b)(2) of the Act. *Monardella linoides* ssp. *viminea* is a covered species under these two approved and legally operative subarea plans. We completed our section 7 consultations on the issuance of the section 10(a)(1)(B) permit for the City of San Diego subarea plan on June 6, 1997, and on the permit for the County of San Diego subarea plan on March 12, 1988. These HCPs provide special management and protection for the physical and biological features essential for the conservation of *M. l. ssp. viminea* that exceed the level of regulatory control that would be

afforded this species by the designation of critical habitat. We believe that the benefits of excluding essential habitat covered by these HCPs from the critical habitat designation would outweigh the benefits of including them as critical habitat, and that the exclusion under consideration would not result in the extinction of *M. l. ssp. viminea*.

In southwestern San Diego County, the MSCP effort encompasses more than 582,000 ac (236,000 ha) and anticipates the participation of 12 jurisdictions. Under the broad umbrella of the MSCP, each of the 12 participating jurisdictions prepares a Subarea Plan that implements the goals of the MSCP within that particular jurisdiction. Three of the 12 jurisdictions cover lands that support *Monardella linoides* ssp. *viminea*. Two of the jurisdictions, County of San Diego and the City of San Diego, have completed subarea plans. The third jurisdiction, the City of Santee, is currently preparing its subarea plan. We conduct a consultation on each subarea plan and associated permit under section 7 of the Act to ensure they are not likely to result in jeopardy, or adversely modify or destroy the designated critical habitat, of any covered species. We also review the plans under Section 10 of the Act to ensure they meet the criteria for issuance of an incidental take permit and are consistent with the terms and goals of the MSCP. As noted above, we completed each of these analyses prior to approving the City and County of San Diego subarea plans and incidental take permits.

The regional MSCP is also a regional subarea plan under the State of California's Natural Communities Conservation Plan (NCCP) program and was developed in cooperation with California Department of Fish and Game (CDFG). Over the 50 year term of the City and County permits, the MSCP provides for the establishment of approximately 171,000 ac (69,573 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City of San Diego) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego) to benefit the 85 federally listed and sensitive species, including *Monardella linoides* ssp. *viminea*, covered under the plan. Private lands within the MHPA and PAMA lands are subject to special restrictions on development and, as they are committed to the preserve, must be legally protected and permanently managed to conserve the covered species. Public lands owned by the City and County and by the State of California and Federal government that are identified for conservation under the MSCP must also be protected and

permanently managed to protect the covered species. The MSCP requires the City and County to develop broad framework and site specific management plans, subject to the review and approval of the Service and CDFG, to guide the management of all preserve lands under City and County control. The plans incorporate requirements to monitor and adaptively manage *M. l. ssp. viminea* habitats over time. Under the MSCP, the State and Federal governments have also committed to provide similar management for their preserve lands.

As discussed above, each take authorization holder will prepare a framework management plan as a condition of its implementing agreement. The framework management plan will provide general direction for all preserve management issues within the subarea plan's boundaries. Area-specific management directives will be developed for managing lands that are conserved as part of the reserves. The framework and area-specific management plans are comprehensive and address a broad range of management needs at the preserve and species levels. These plans include the following: (1) Fire management, (2) public access control, (3) fencing and gates, (4) ranger patrol, (5) trail maintenance, (6) visitor/interpretive and volunteer services, (7) hydrological management, (8) signage and lighting, (9) trash and litter removal, (10) access road maintenance, (11) enforcement of property and/or homeowner requirements, (12) removal of invasive species, (13) nonnative predator control, (14) species monitoring, (15) habitat restoration, (16) management for diverse age classes, (17) use of herbicides and rodenticides, (18) biological surveys, (19) research, and (20) species management conditions (Final MSCP Plan 1998). These management measures benefit *Monardella linoides* ssp. *viminea* and reduce the threats to this species. The MSCP also provides for a biological monitoring program, and *M. l. ssp. viminea* is identified as a first priority plant species for field monitoring (Ogden Environmental and Energy Services 1996). Species prioritized for field monitoring (like *M. l. ssp. viminea*) face the greatest threats to their viability, and detailed field monitoring would assess both immediate threats and long-term population trends. The City of San Diego monitors *M. l. ssp. viminea* on an annual basis (City of San Diego 2000, 2001, 2002, 2003, and 2004). Moreover, the rare plant monitoring plan is being updated with the assistance of the U.S.

Geological Survey Biological Research Division and a three member independent scientific advisory group.

In addition to the restrictions on development and conservation obligations that apply within the MHPA and PAMA, the MSCP incorporates processes to protect sensitive species of limited distribution, including *Monardella linoides* ssp. *viminea*, within the plan area. Under the City of San Diego's subarea plan, impacts to narrow endemic species inside the MHPA will be avoided and outside the MHPA will be protected as appropriate by (1) avoidance, (2) management, (3) enhancement, and/or (4) transplantation to areas identified for preservation. Under the County of San Diego's subarea plan, narrow endemic plants, including *M. l. ssp. viminea*, would be conserved under their Biological Mitigation Ordinance using a process that (1) requires avoidance to the maximum extent feasible, (2) allows for a maximum 20 percent encroachment into a population if total avoidance is not feasible, and (3) requires mitigation at the 1:1 to 3:1 (in kind) for impacts if avoidance and minimization of impacts would result in no reasonable use of the property. Thus, these processes to protect narrow endemic plants, including *M. l. ssp. viminea*, whether located on lands targeted for preserve status within the MHPA and PAMA or located outside of those areas, ensure these limited distribution species are protected wherever they occur. Considered as a whole, the protection and management of *M. l. ssp. viminea* provided under the City and County subarea plans will ensure the permanent conservation of this species and its habitat within the areas covered by the plans.

We are therefore considering excluding from critical habitat a portion of Sycamore Canyon and all of West Sycamore Canyon, Spring Canyon, San Clemente Canyon, Elanus Canyon, Lopez Canyon, Marron Valley, and Otay Lakes under section 4(b)(2) of the Act because they are covered by the City and the County subarea plans. All of the populations of *Monardella linoides* ssp. *viminea* anticipated to be conserved by the MSCP under the City of San Diego and County of San Diego subarea plans occur in these geographical areas. These populations will be conserved and will be managed and monitored pursuant to or consistent with the MSCP. The framework and area-specific management plans (described above) provide management and monitoring of *M. l. ssp. viminea*.

The portions of Sycamore Canyon (Units 3A, 3B, and 3C) that we are

considering excluding from critical habitat are under City and County ownership and are within the reserve design of the MHPA and PAMA under the City's and County's subarea plans. The majority of the County-owned PAMA lands in Sycamore Canyon has already been conserved and is being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, consistent with the framework and area-specific management plans described above. The remaining County-owned lands and City-owned lands in Sycamore Canyon have not yet been formally committed to the preserve but will continue to be protected through the City's and County's subarea plans processes to protect narrow endemic species (described above) until these lands become part of the preserve.

Lands in West Sycamore Canyon (Unit 3D) that we are considering excluding from critical habitat are under City ownership and are within the reserve design of the MHPA. These lands have been already conserved and are being managed for the conservation of covered species consistent with the framework and area-specific management plans described above, including *Monardella linoides* ssp. *viminea* under the City's subarea plan.

Lands in Spring Canyon (Unit 3E) that we are considering excluding from critical habitat are under private ownership but are within the reserve design of the MHPA and are targeted for preservation under the City's subarea plan. The private lands in Spring Canyon have not yet been formally committed to the preserve, but are within an area that calls for 100 percent conservation of *Monardella linoides* ssp. *viminea*. The City of San Diego has recently acquired private lands in Spring Canyon through the MSCP that will benefit *M. l. ssp. viminea*. Populations of *M. l. ssp. viminea* on the remaining private lands will continue to be protected through the City's subarea plan process described above to protect narrow endemic species until these private lands become part of the preserve.

Lands in San Clemente Canyon (Unit 4) that we are considering excluding from critical habitat are under City ownership. The majority of these lands is within the reserve design of the MHPA, has been committed to the preserve, and is being managed for the conservation of covered species consistent with the framework and area-specific management plans described above, including *Monardella linoides* ssp. *viminea*, under the City's MSCP subarea plan. A small portion of these

lands is on City-owned lands that are not within the MHPA. Populations of *M. l. ssp. viminea* on the remaining City-owned lands will continue to be protected through the City's subarea plan process described above to protect narrow endemic species.

Lands in Elanus Canyon (Unit 5) that we are considering excluding from critical habitat are under City ownership and are within the reserve design of the MHPA. They are committed to the preserve and are being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, under the City's subarea plan.

Lands in Lopez Canyon (Unit 6) that we are considering excluding from critical habitat are under City ownership and are within the reserve design of the MHPA. The lands are committed to the preserve and are being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, under the City's subarea plan.

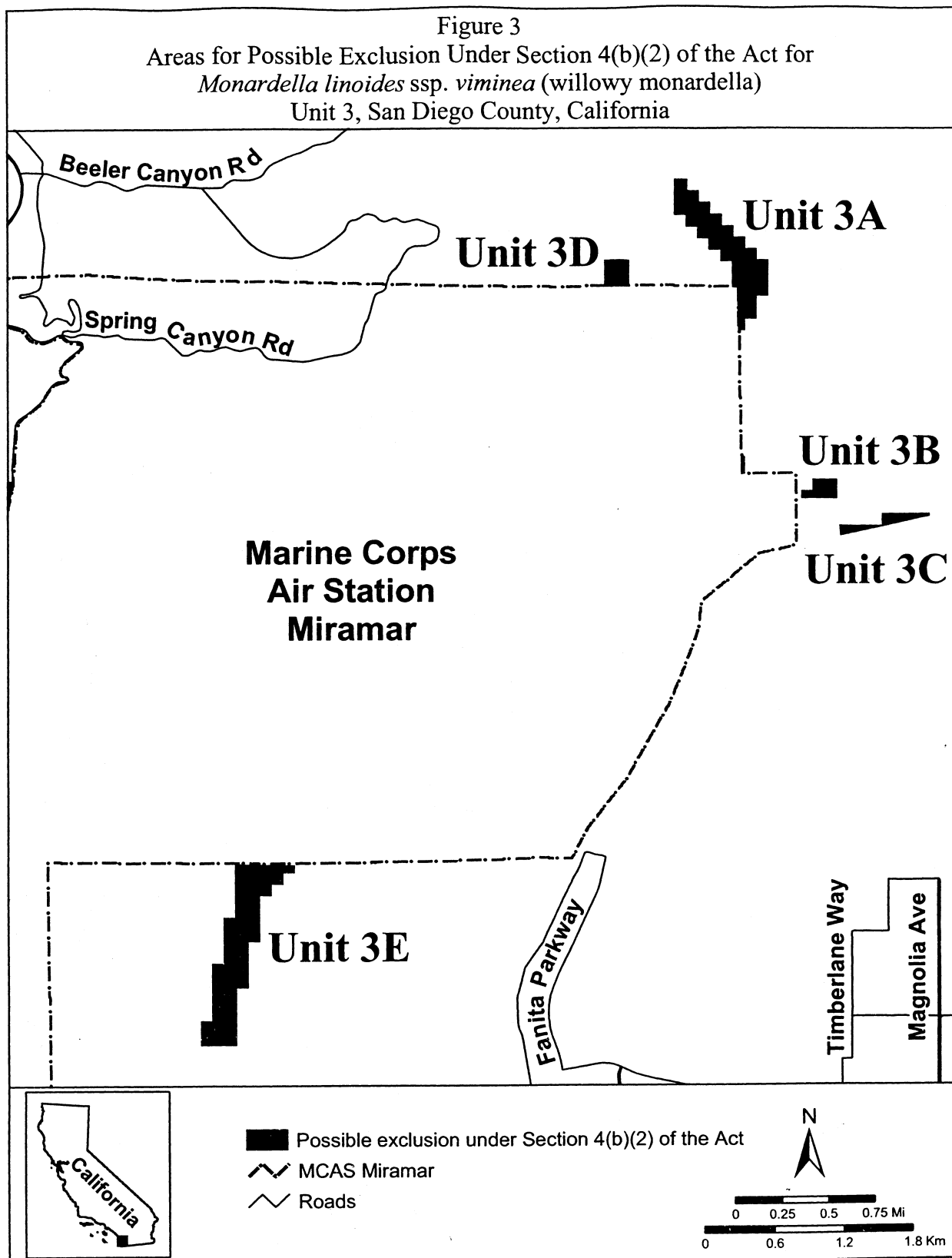
Lands in Marron Valley (Unit 7) that we are considering excluding from critical habitat are under City and State ownership and are within the reserve design of the MHPA. The City-owned lands have been committed to the preserve and are being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, under the City's subarea plan.

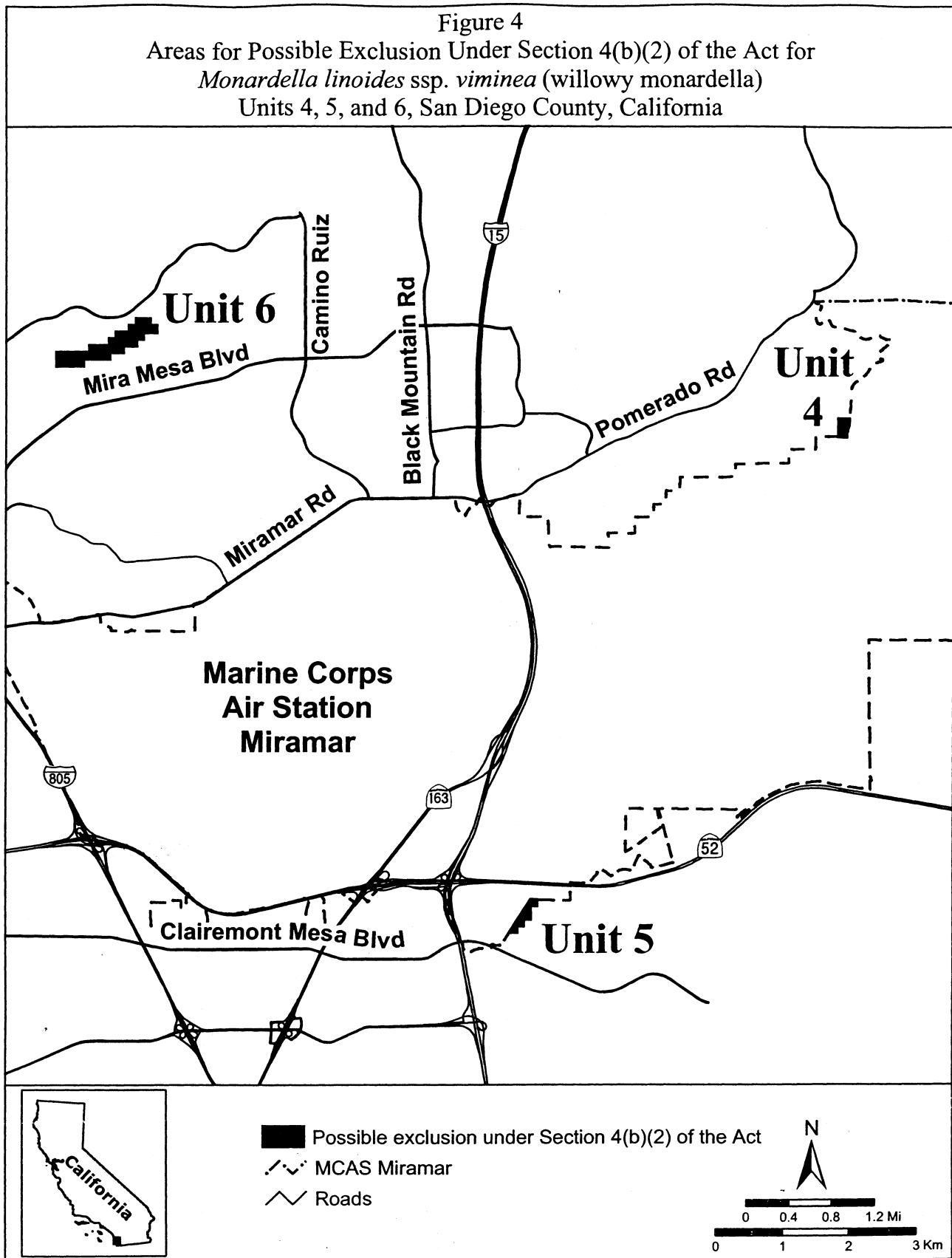
Lands in Otay Lakes (Unit 8) that we are considering excluding from critical habitat are under City of San Diego, City of Chula Vista, State of California, and private ownership; are within the MHPA and PAMA; and are either already committed to the preserve or are targeted for 100 percent preservation under the City's and County's subarea plans. The lands owned by the City of Chula Vista were formerly owned by Otay Ranch and were conveyed to the City as mitigation of the Otay Ranch development. These lands are conserved within the County of San Diego's subarea plan. The preserve lands are being managed for the conservation of the covered species, including *Monardella linoides* ssp. *viminea*, under the City's and County's subarea plans and pursuant to commitments made by the State of California to implement the MSCP on state owned lands. Those lands not yet formally committed to the preserve will continue to be protected through the County's subarea plan process described above to protect narrow endemic species until these lands become part of the preserve.

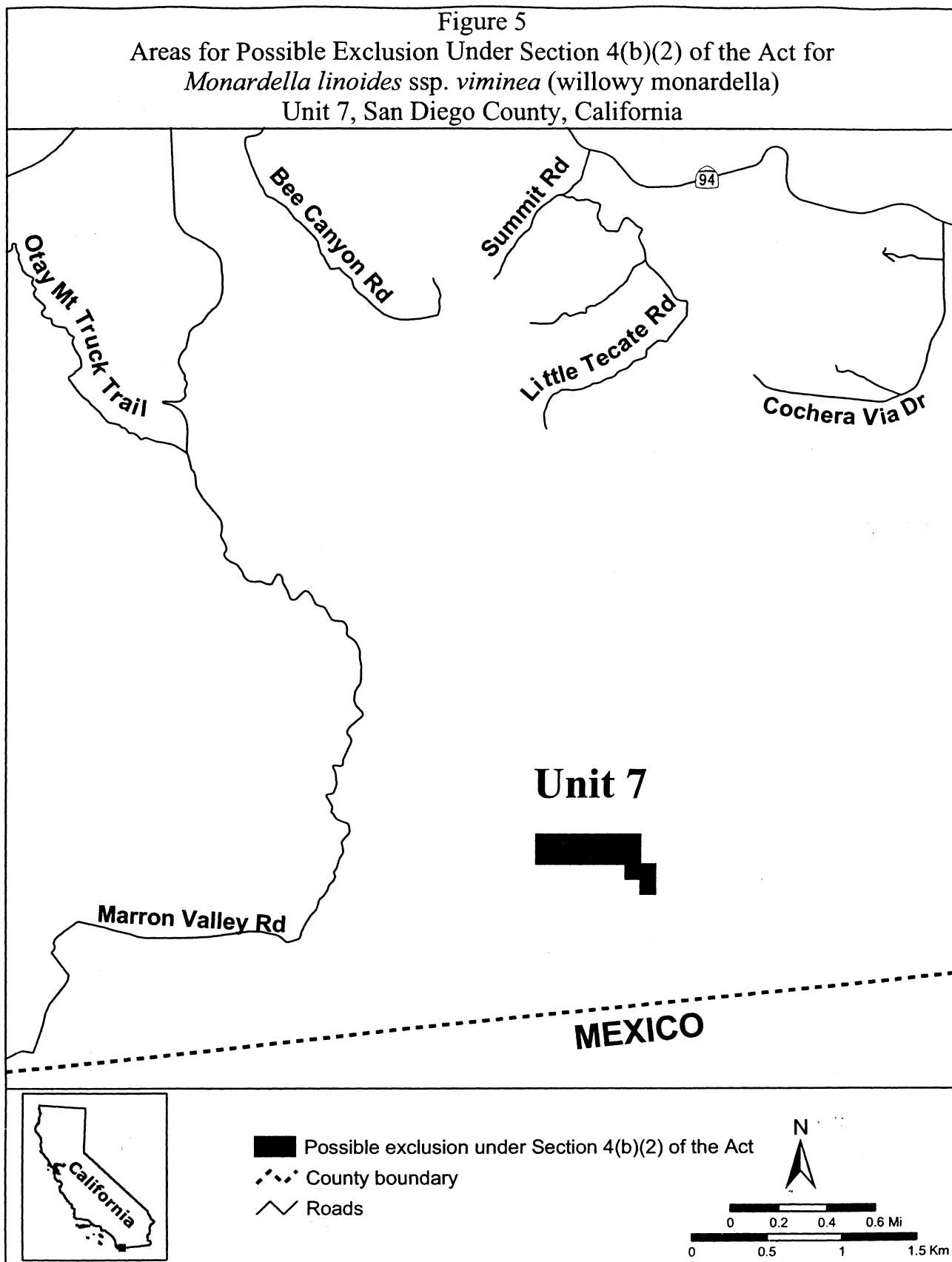
The following figures show the San Diego MSCP lands that we are considering excluding from critical

habitat designation under section 4(b)(2)  
of the Act:

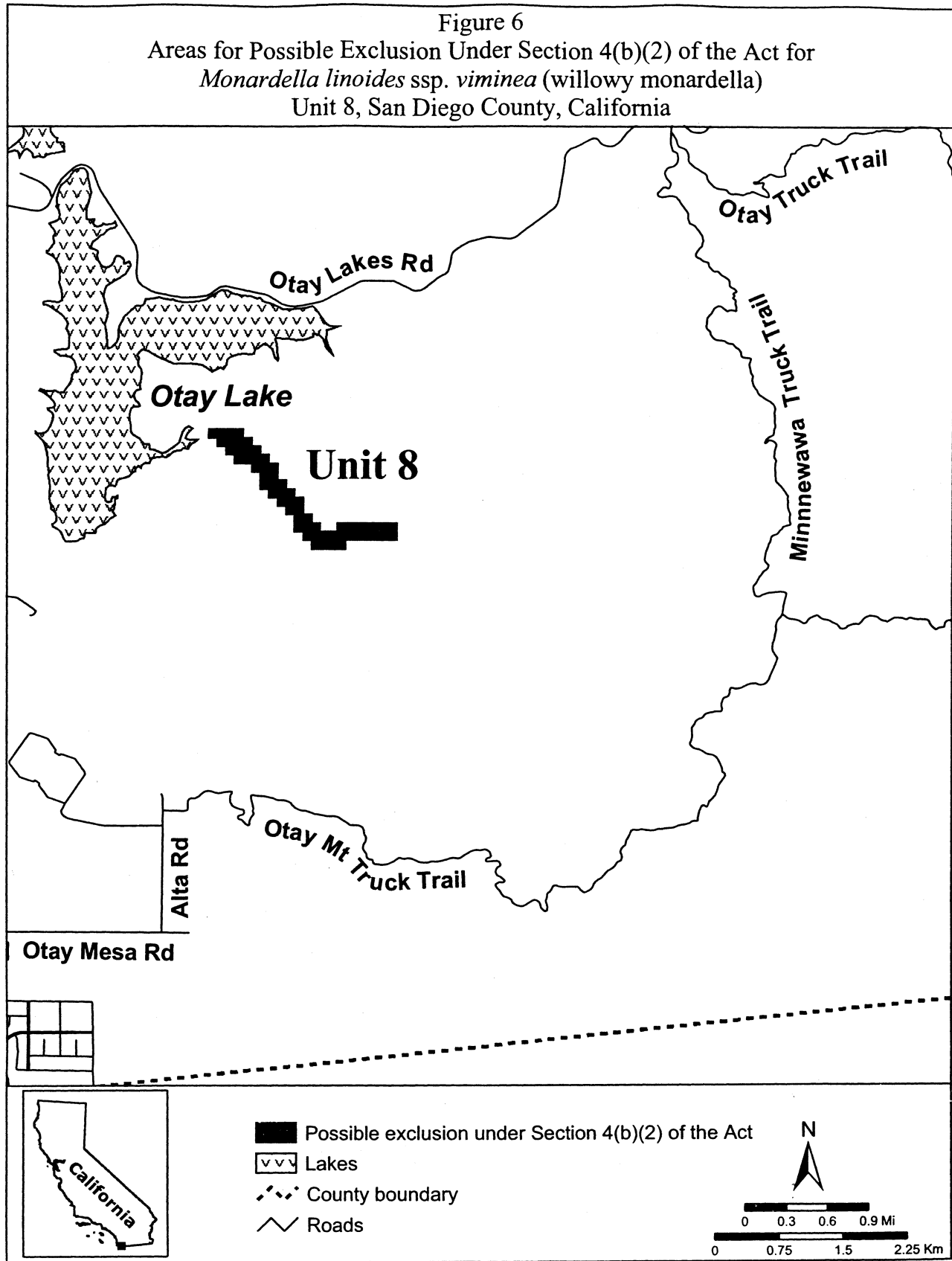
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### (1) Benefits of Inclusion

Overall, we believe that there is minimal benefit from designating critical habitat for *Monardella linoides* ssp. *viminea* within approved subarea plans under the San Diego MSCP. As explained above, the majority of these lands are either already permanently protected and managed for the conservation of covered species, including *M. l. ssp. viminea* or are subject to restrictions on development and City's and County's subarea plans' processes described above to protect narrow endemic species. These processes will protect narrow endemic species, including *M. l. ssp. viminea*, until these lands become part of the preserve. Below, we discuss benefits of inclusion of these HCP lands.

A benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The designation of critical habitat may provide a level of protection under section 7(a)(2) of the Act for *Monardella linoides* ssp. *viminea* that is distinct from the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of the endangered species. *Gifford Pinchot* arguably makes it easier to reach an 'adverse modification' finding by reducing the harm or affecting recovery, rather than the survival of the species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed, but it is not possible to quantify this benefit at present. However, there is also an important limitation inherent in section 7(a)(2). This provision limits adverse effects to the species and its designated critical habitat either through jeopardy or destruction or adverse modification analyses. It does not require positive improvements to or enhancement of the species' status. Thus, any management plan will almost always provide more benefit than the critical habitat designation, particularly where, as is the case for *M. l. ssp. viminea*, the species may require active management to recover.

The areas being considered for exclusion from critical habitat are currently occupied by the species. Therefore, for Federal actions that may affect lands occupied by *Monardella linoides* ssp. *viminea* and may adversely affect the species, consultation would be required, even without the critical

habitat designation under section 7 of the Act. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely affect the critical habitat would require a consultation with us, as explained previously in Effects of Critical Habitat Designation section, and their PCEs would be protected from destruction or adverse modification using a conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. This requirement would be in addition to the requirement that proposed Federal actions avoid likely jeopardy to the species' continued existence. Thus, a potential benefit of critical habitat would be the requirement of Federal agencies to ensure their actions do not result in the destruction or adverse modification of critical habitat pursuant to section 7(a)(2) of the Act. We believe that the affirmative management and protection afforded essential habitat of *M. l. ssp. viminea* under the approved MSCP subarea plans provides permanent conservation benefits to the species in excess of those likely to result through the regulatory requirement to avoid adverse modification of critical habitat under Section 7. Therefore the additional conservation benefit, if any, of designating critical habitat on lands covered by approved MSCP subarea plans, would be minimal.

Another potential benefit of designation would be to signal the importance of these lands to the conservation of *Monardella linoides* ssp. *viminea* to Federal agencies and to the public. In *Sierra Club v. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat containing the features essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. The inclusion of an area as critical habitat may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved for *M. l. ssp. viminea*. The public outreach and environmental impact reviews required under the National Environmental Policy Act for the MSCP, City of San Diego Subarea Plan, and County of San Diego Subarea Plan provided significant opportunities for public education regarding the

conservation of the areas occupied by *M. l. ssp. viminea*. Under the MSCP, annual public meetings are held to assess progress being made to implement the approved subarea plans and protect covered species and their habitats. These ongoing public outreach efforts ensure that members of the public will continue to be made aware of the importance of protecting the covered species and their habitats and will be provided with a continuing opportunity to comment on and contribute to the MSCP's conservation goals. There would be little additional informational benefit gained from including these lands as critical habitat because of the level of information that has been, and continues to be, made available to the public as part of the regional planning effort.

In summary, we believe that designating any non-Federal lands within the City's and County's subarea plan as critical habitat would provide little additional regulatory or educational benefits for the species. These essential lands are already protected under the MSCP and are required to be conserved and managed for the benefit *Monardella linoides* ssp. *viminea* through implementation of the subarea plans. The additional educational benefits that might arise from critical habitat designation have been and continue to be accomplished through the public review and comment of the environmental impact documents which accompanied the development of the San Diego MSCP, periodic public meetings to assess the plans, and the recognition by the City of San Diego, County of San Diego, State of California, and Federal agencies of the presence of *Monardella linoides* ssp. *viminea* and the value of their lands for the conservation and recovery of the species that has already been provided through development and implementation of the MSCP.

### (2) Benefits of Exclusion

As mentioned above, the San Diego MSCP requires avoidance of impacts to *Monardella linoides* ssp. *viminea* both within and outside of existing and targeted reserve areas and provides for permanent conservation and active management of this species consistent with the framework and area-specific management plans (described above) and its habitat within the MHPA. Because the MSCP requires protection of the physical and biological features essential to the conservation of *M. l. ssp. viminea* and addresses the species' special management needs, we believe that designation of critical habitat would not provide an appreciable

benefit to the species beyond those achieved through the positive conservation measures in the plan.

The benefits of excluding from critical habitat designation lands covered by approved MSCP subarea plans include relieving landowners, communities, the City and the County of any additional regulatory burden that might be imposed by a critical habitat designation consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. Many HCPs, particularly large regional HCPs such as the MSCP, take many years to develop and, upon completion, become regional conservation plans that essentially implement recovery objectives for listed covered species within the plan area. Additionally, many of these HCPs, including the MSCP, provide conservation benefits to unlisted, sensitive species. Imposing an additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and result in a loss of species' benefits if participants abandon the HCP process. This is particularly true with regard to plant species such as *Monardella linoides* ssp. *viminea*, and unlisted species, the coverage of which is completely voluntary under an HCP, because critical habitat designation may result in more regulatory requirements than those faced by other parties who have not participated in voluntary conservation efforts for these species.

Another benefit of excluding these lands is to maintain the partnerships developed among the City of San Diego, County of San Diego, State of California, and the Service to implement the City of San Diego Subarea Plan and County of San Diego Subarea Plan. Instead of using limited funds to comply with administrative consultation and designation requirements which are unlikely to provide protection beyond what is currently in place, the partners could instead use their limited funds for the conservation of this species.

A related benefit of excluding lands within HCPs from critical habitat designation is the unhindered, continued ability to seek new partnerships with future HCP participants including States, Counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. A primary objective of applicants developing multiple species regional HCPs is to streamline future regulatory requirements. If lands within HCP plan areas are designated as critical habitat

and required to undergo subsequent Section 7 consultation based solely on critical habitat designation, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By excluding these lands, we would preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the regulatory prohibition against adverse modification of critical habitat unless critical habitat has already been designated within the proposed plan area, the consultation will determine if the HCP is likely to jeopardize the species in the plan area. Since the objective of virtually all habitat conservation plans is to protect the covered species by conserving their essential habitat within the plan area, an important component of the Section 7 jeopardy review is an analysis of the effects of the covered activities on this essential habitat. In the biological opinions completed for the San Diego MSCP, the Service concluded that implementation of the plan is not likely to result in jeopardy to the species directly or through habitat loss. HCPs and NCCP/HCPs, including the MSCP, typically provide for greater conservation benefits to covered species than section 7 consultations because they include proactive long-term protection and management of covered species and their habitats, along with assured funding for such management through the standards found in the 5 Point Policy for HCPs (June 1, 2000; 64 FR 35242) and the HCP "No Surprises" regulation (February 23, 1998; 63 FR 8859). Such assurances are typically not provided by section 7 consultations that, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits a HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development. In summary, the benefits of excluding lands covered by approved HCP and HCP/NCCPs generally, and the City and

County approved MSCP subarea plans in particular, include the preservation of existing partnerships and conservation efforts and the cultivation of new partnerships in the future by eliminating largely duplicative regulatory requirements that can serve as a disincentive to development and implementation of these conservation plans. This benefit is particularly important with regard to *Monardella linoides* ssp. *viminea*, which as a listed plant species is not subject to the Act's section 9 prohibition against take. The affirmative conservation measures provided for this species under the MSCP are entirely voluntary.

### (3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed the proposed exclusion from critical habitat of approximately 494 ac (200 ha) of non-Federal lands covered by approved subarea MSCP subarea plans and based on this review, we believe that the benefits of excluding (avoidance of increased regulatory costs which could result from including those lands in this designation of critical habitat, maintaining existing conservation partnerships, encouraging new conservation partnerships, and directing limited funding to proactive conservation actions with partners) those lands containing features essential to the conservation of *M. l. ssp. viminea* outweigh the benefits of including (limited educational and regulatory benefits, which are largely duplicative of those provided for under the MSCP) the lands in our critical habitat designation. The benefits of inclusion of these 494 ac (200 ha) of non-Federal lands as critical habitat are small because of the significant level of conservation already provided to the *M. l. ssp. viminea* and its habitat under the San Diego MSCP (conservation of occupied and potential habitat). These minimal benefits are outweighed by the significant benefits of preserving our long term partnership with the City of San Diego, County of San Diego, and State of California and encouraging similar future conservation partnerships with others through the exclusion of these 494 ac (200 ha) of non-Federal lands.

### (4) Exclusion Will Not Result in Extinction of the Species

Exclusion of these 494 ac (200 ha) of non-Federal lands would not result in extinction of *Monardella linoides* ssp. *viminea* because these lands will be permanently conserved and managed for the benefit of this species pursuant to the approved MSCP subarea plans.

The jeopardy standard of section 7 and routine implementation of habitat conservation through the section 7 process also provide assurances that the species will not go extinct. The exclusion leaves these protections unchanged from those that would exist if these areas were designated as critical habitat.

**Possible Exclusion of Critical Habitat Within the Bureau of Land Management Otay Mountain Wilderness Under Section 4(b)(2) of the Act**

Federal lands managed by the Bureau of Land Management (BLM) are an integral part of the conservation strategy of San Diego MSCP. However, BLM, like any other Federal agency, is not a permittee under the section 10(a)(1)(B) permit for the San Diego MSCP. The BLM, Service, CDFG, City of San Diego, and County of San Diego, in cooperation with the San Diego Association of Governments (SANDAG) signed a MOU in June 1994 committing to cooperate in habitat conservation planning and management related to the San Diego MSCP. Under the MOU, BLM agreed to take the following actions to assist in implementing the MSCP's conservation goals and objectives: (1) To make maintenance and management of the area's unique biological diversity a principal goal in the design and implementation of its conservation programs; (2) to coordinate with the other signatory parties regarding

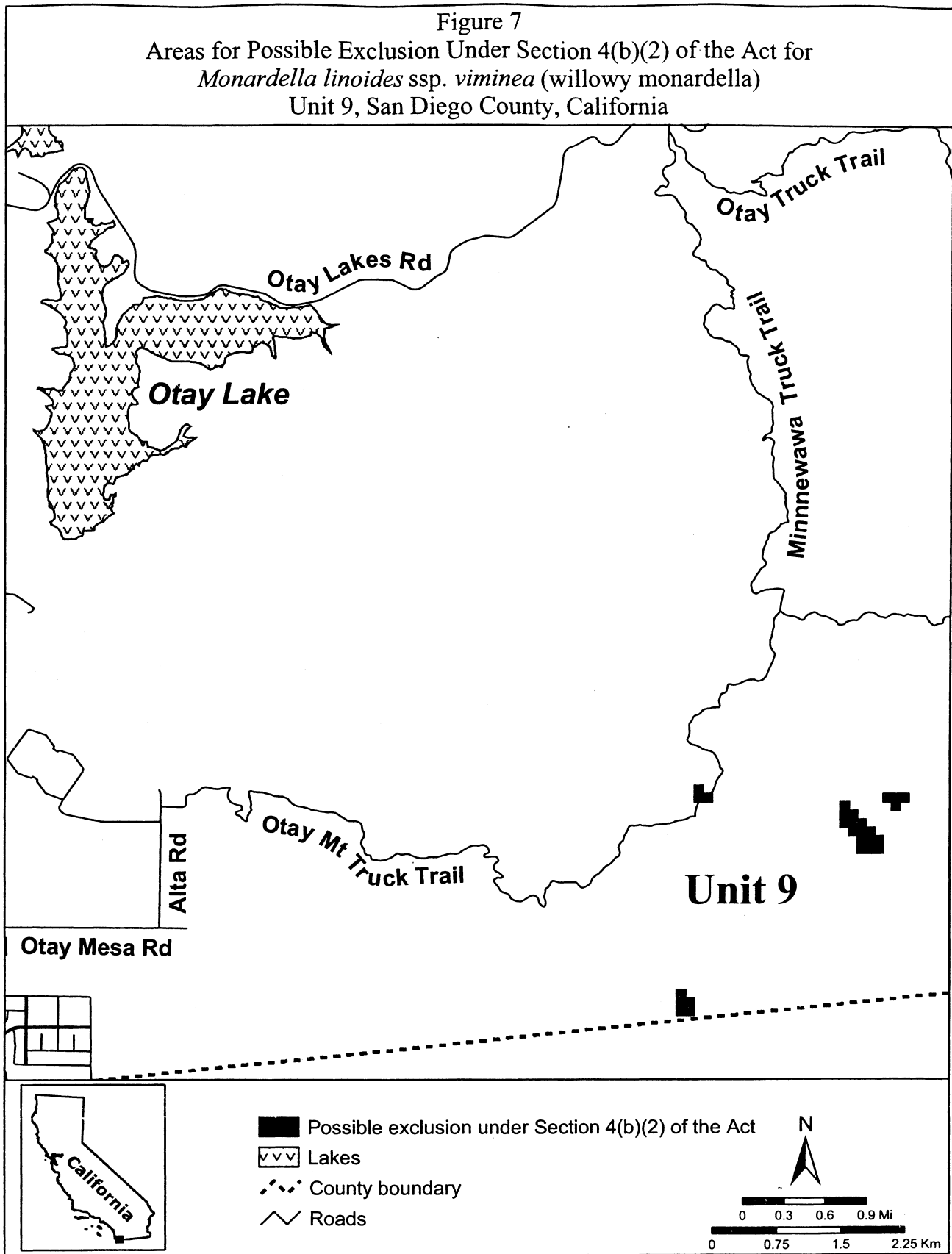
assessment of the wildlife values of those lands managed by BLM within San Diego County; (3) to coordinate with signatory parties to resolve any BLM, State, regional and/or local land management prescriptions that are inconsistent with existing or proposed conservation objectives; (4) to work with the County, the City, SANDAG, CDFG, and Service in identifying the lands it manages for inclusion within the region's habitat conservation systems; and (5) to work with signatory parties to acquire key habitat areas using a variety of techniques. Thus, while not a permittee to the section 10(a)(1)(B) permit for the San Diego MSCP, BLM lands, in particular those on Otay Mountain that support a variety of listed and sensitive covered MSCP species, are a key component of the overall reserve design for the MSCP.

At the time of the MOU, *Monardella linoides* ssp. *viminea* was not known to occur on BLM lands at Otay Mountain. Since the development and approval of the San Diego MSCP, new information has identified a previously unknown population of *M. l. ssp. viminea* on BLM lands at West Otay Mountain. Surveys in 2000 counted 202 clumps of *M. l. ssp. viminea*, making this occurrence the fourth largest population at that time. The populations of *M. l. ssp. viminea* on BLM lands at Otay Mountain are within the area covered by the MOU. Congress formally designated BLM lands on Otay Mountain as the Otay Mountain

Wilderness in 1999 (Otay Mountain Wilderness Act, Pub. L. 106-145, December 9, 1999). The occurrences of *M. l. ssp. viminea* on Otay Mountain are within the designated boundaries of the Otay Mountain Wilderness. The inclusion of these occupied habitats within a designated Wilderness provide additional significant protection for this area and complement BLM's objective to manage these public lands to provide protection and enhancement for biological values. The Wilderness Act of 1964 (16 U.S.C. 1131 et seq.) restricts vehicles, new developments, chainsaws, mountain bikes, leasing, and mining from the wilderness area. Grazing is permitted within the wilderness area; however, no grazing allotments currently exist. Thus, the population of *M. l. ssp. viminea* on BLM land receives conservation protection consistent with the Otay Mountain Wilderness, MOU, and San Diego MSCP. We are therefore considering excluding from critical habitat Unit 9 for approximately 67 ac (27 ha) of Federal lands managed by the BLM within the designated Otay Mountain Wilderness and targeted for conservation under the MOU for the San Diego MSCP under section 4(b)(2) of the Act.

The following figure shows the areas of BLM lands that we are considering excluding from critical habitat designation under section 4(b)(2) of the Act:

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### (1) Benefits of Inclusion

Overall, we believe that there is minimal benefit from designating critical habitat for *Monardella linoides* ssp. *viminea* on BLM lands because the habitat essential for this species on Otay Mountain is already conserved within the Otay Mountain Wilderness and is targeted for conservation under the MOU for the San Diego MSCP as explained above.

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The designation of critical habitat may provide a different level of protection under section 7(a)(2) of the Act for *M. l. ssp. viminea* that is separate from the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of the endangered species. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed, but it is not possible to quantify this benefit at present. However, the protection provided is still a limitation on the adverse effects that occur as opposed to a requirement to provide a conservation benefit.

The inclusion of these 67 ac (27 ha) of Federal land in critical habitat designation is unlikely to provide any additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. Inclusion of this area in critical habitat would require Federal agencies to ensure that their actions on these Federal lands are not likely to result in the destruction or adverse modification of critical habitat. The potential benefits resulting from this additional analysis to determine destruction or adverse modification of critical habitat are likely to be minimal to nonexistent because the extensive restrictions on permitted uses and the prohibition on development of designated wilderness lands virtually eliminates the possibility of future Federal actions likely to negatively impact essential habitat for *Monardella linoides* ssp. *viminea* within this area. Further, in contrast to section 7(a)(2) of the Act, the wilderness designation and MOU go well beyond a simple requirement to avoid adverse modification of critical habitat. BLM has demonstrated its proactive commitment to the conservation goals and objectives of the MSCP by entering into the 1994

MOU and committing to manage its public lands for the benefit of *M. l. ssp. viminea* and other covered species.

Another potential benefit of critical habitat would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public to encourage conservation efforts to benefit *M. l. ssp. viminea* and its habitat. However, as discussed above, the importance of protecting the biological resource values of these lands, including *M. l. ssp. viminea*, has already been clearly and effectively communicated to Federal, State, and local agencies and other interested organizations and members of the public through designation of the lands as wilderness as well as through the 1994 MOU.

### (2) Benefits of Exclusion

As mentioned above, the Otay Mountain Wilderness designation provides significant levels of protection, and the MOU provides for the management and protection of *Monardella linoides* ssp. *viminea* on lands managed by the BLM consistent with the San Diego MSCP. Through these mechanisms, the physical and biological features essential for the conservation of *M. l. ssp. viminea* will be protected and managed. We believe that designation of critical habitat would not provide any meaningful additional benefit to the species and its habitat beyond those provided through Otay Mountain Wilderness designation and the 1994 MSCP MOU.

A benefit of excluding Federal lands within the Otay Mountain Wilderness and the MOU from critical habitat designation includes relieving Federal agencies of any unnecessary additional regulatory burden that might be imposed by a critical habitat designation. As noted above, this benefit is likely to be minimal since the wilderness designation prohibits virtually all development and use of these lands that might adversely modify designated critical habitat. The exclusion of these Federal lands as critical habitat does not remove the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of *M. l. ssp. viminea* or to comply with the Otay Mountain Wilderness Act.

Another benefit from excluding these lands is to maintain the partnerships developed among BLM, Service, State of California, City of San Diego, and the County of San Diego to manage the Otay Mountain Wilderness and implement the San Diego MSCP. Instead of using limited funds to comply with

administrative consultation and designation requirements that cannot provide protection beyond what is currently in place, the partners could instead use their limited funds for the conservation of this species. By excluding these lands, we would preserve our current partnerships.

### (3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the benefits of exclusion (avoiding the costs in money and time of duplicative and unnecessary Section 7 consultations) of the lands containing features essential to the conservation of *Monardella linoides* ssp. *viminea* within the designated Otay Mountain Wilderness, although minimal, outweigh the even more minimal benefits of inclusion (potential educational and regulatory benefits that are already provided and exceeded under the Otay Mountain Wilderness Act and MOU) of these lands as critical habitat.

Critical habitat designation is anticipated to provide little or no additional benefit to *Monardella linoides* ssp. *viminea* on BLM lands. The primary benefit of any critical habitat is that activities that require Federal funding, permitting, or authorization, and which may affect critical habitat, require consultation pursuant to section 7 of the Act to ensure the activity will not destroy or adversely modify designated critical habitat. This benefit is already present by virtue of the inclusion of the occupied habitat within the Otay Mountain Wilderness. The educational benefits of critical habitat, including informing the public of areas that are important to the conservation of listed species, are already in place as a result of the enactment of the Otay Mountain Wilderness legislation and the approval and ongoing implementation of the MSCP. For these reasons, we believe that the inclusion of critical habitat on BLM lands would provide virtually no benefit.

After weighing the minimal benefits of including these lands as critical habitat against the slightly greater benefits derived from excluding these lands as critical habitat, we are considering excluding from critical habitat BLM lands within the Otay Mountain Wilderness pursuant to section 4(b)(2) of the Act.

### (4) Exclusion Will Not Result in Extinction of the Species

The proposed exclusion of these 67 ac (27 ha) of Federal lands would not result in extinction of *Monardella linoides* ssp. *viminea* because these lands will be permanently protected for

the benefit of this species and its essential habitat pursuant to the Otay Mountain Wilderness Act and will be actively managed pursuant to the 1994 MOU. The protection of the Otay Mountain population of *Monardella linoides* ssp. *viminea* and its habitat, along with the conservation of the remaining populations and essential habitat of this species under the San Diego MSCP and MCAS Miramar INRMP, will ensure the species' continued existence.

The jeopardy standard of section 7 and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct. The exclusion under consideration leaves these protections unchanged from those that would exist if the subject areas were designated as critical habitat.

We have not included legal descriptions or maps of the areas we are exempting (under section 4(a)(3) of the Act) or excluding (under section 4(b)(2) of the Act) in the rule portion of this document. As mentioned above, however, we are soliciting public comment on whether the exemption or possible exclusions are appropriate for the subject lands.

### Economic Analysis

An analysis of the economic impacts of the proposed critical habitat designation for *Monardella linoides* ssp. *viminea* will be prepared soon. 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://carlsbad.fws.gov>, or by contacting the Carlsbad 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 (see **DATES** section). 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](mailto:Exsec@ios.doi.gov).

### Required Determinations

#### Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. 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. This economic analysis also will be used to determine compliance with E.O. 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and E.O. 12630.

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. The draft economic analysis will be available from the Internet Web site at <http://carlsbad.fws.gov> or by contacting the CFWO directly (see **ADDRESSES** section).

#### Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn. v. U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (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 Regulatory Flexibility Act (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 is prepared pursuant to section 4(b)(2) of the Act and E.O. 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 60 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 Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E. O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Monardella linoides* ssp. *viminea* is not a significant regulatory action under E. O. 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), 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 that receive Federal funding, assistance, or permits, or that 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 because the proposed critical habitat is on private lands and Padre Dam Municipal Water District lands. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

#### *Federalism*

In accordance with E.O. 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 the State of California Resources Agency. The designation of critical habitat in areas currently occupied by *Monardella linoides* ssp. *viminea* 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 that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation 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 Endangered Species Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of *Monardella linoides* ssp. *viminea*.

#### *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



Endangered Species Act of 1973, as amended. 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)).

#### *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 Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal

lands occupied at the time of listing containing the features essential for the conservation, and no Tribal lands that are unoccupied areas that are essential for the conservation of *Monardella linoides* ssp. *viminea*. Therefore, we are proposing no critical habitat for *M. l.* ssp. *viminea* is not being proposed on Tribal lands.

#### References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Author(s)

The primary author of this package is the Carlsbad Fish and Wildlife Office.

#### 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 "*Monardella linoides* ssp. *viminea*" 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							
*	*	*	*	*	*	*	*
<i>Monardella linoides</i> <i>ssp. viminea.</i>	willowy monardella	U.S.A. (CA), Mexico	Lamiaceae (Mint family).	E	629	17.96(a)	NA
*	*	*	*	*	*	*	*

3. In § 17.96(a), add critical habitat for *Monardella linoides* ssp. *viminea* in alphabetical order under Family Lamiaceae to read as follows:

#### § 17.96 Critical habitat—plants.

##### (a) Flowering plants.

\* \* \* \* \*

Family Lamiaceae: *Monardella linoides* ssp. *viminea* (willowy monardella)

(1) Critical habitat unit is depicted for San Diego County, California, on the map below.

(2) The primary constituent elements for *Monardella linoides* ssp. *viminea* are the habitat components that provide:

(i) Coarse, rocky, sandy alluvium on terraced floodplains, benches, stabilized sandbars, channel banks, and sandy washes along and within the ephemeral drainages that provide space for growth, reproduction, and dispersal;

(ii) Ephemeral drainages where water flows only after peak seasonal rains and major flooding events, periodically scours riparian vegetation, and redistributes alluvial material by eroding and developing stream channels, benches, and sandbars, thus maintaining necessary dynamic habitat processes for the species; and

(iii) Coastal sage and riparian scrub with an open and semi-open canopy and little or no herbaceous understory situated along ephemeral drainages and adjacent floodplains to ensure that the subspecies receives adequate sunlight for nutrient uptake for photosynthesis.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining the map unit were created on a base of USGS 7.5' quadrangles, and the critical habitat unit was then mapped using a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the area defined by features essential to the conservation of *Monardella linoides* ssp. *viminea*.

(5) Unit 1 for *Monardella linoides* ssp. *viminea*: Sycamore Canyon Unit, San Diego County, California. From USGS 1:24,000 quadrangle San Vicente Reservoir. Lands bounded by the following UTM NAD27 coordinates

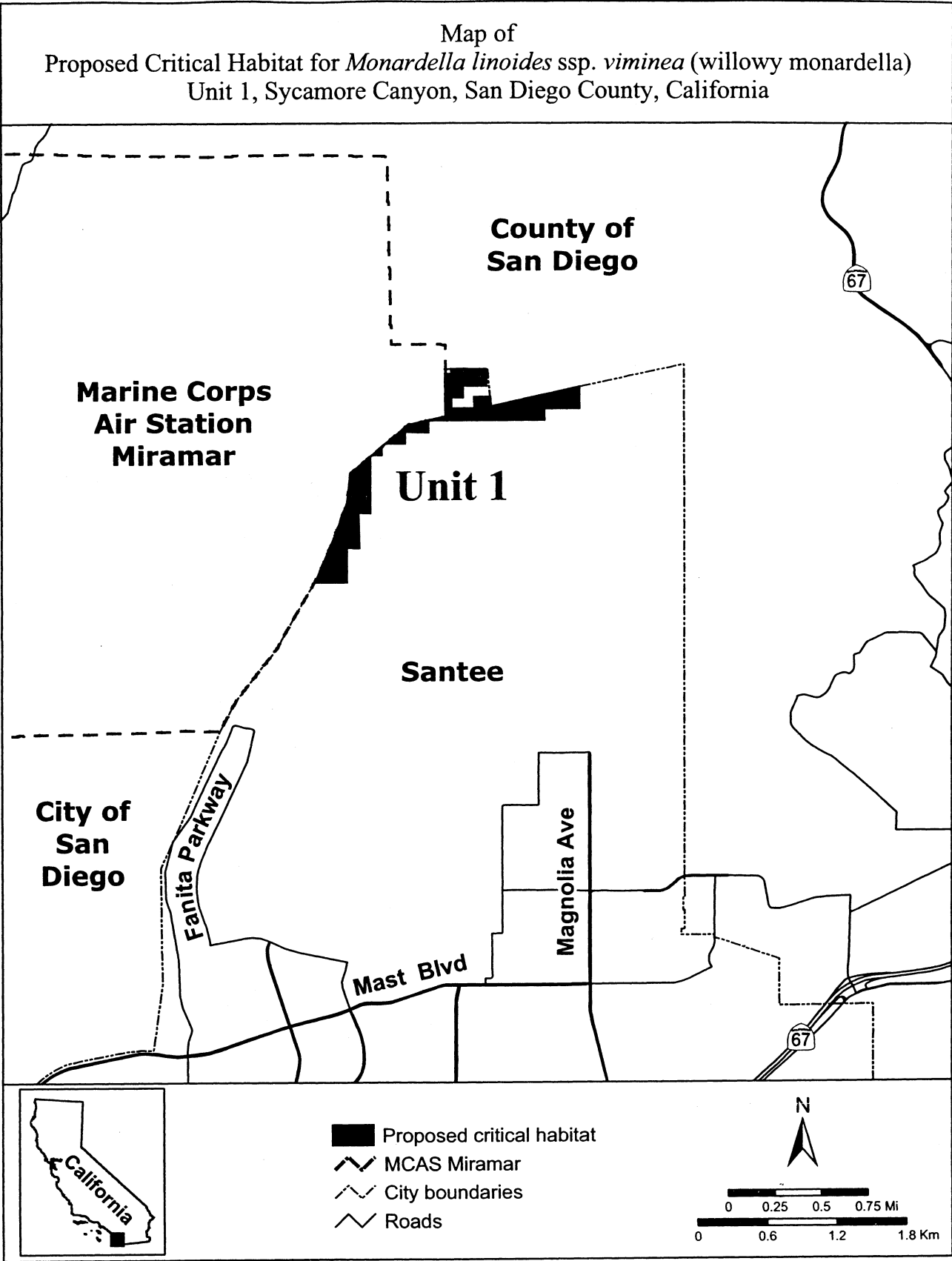
(E,N): 501900, 3640200; 501700, 3640200; 501700, 3640100; 501600, 3640100; 501600, 3640000; 501800, 3640000; 501800, 3640100; thence east to the City of Santee boundary at y-coordinate 3640100; thence south and east following the City of Santee boundary to x-coordinate 502700; thence south following 502700, 3640000; 502400, 3640000; 502400, 3639900; thence west to the City of Santee boundary at y-coordinate 3639900; thence north along the City of Santee boundary to y-coordinate 3640300; thence east to 501600, 3640300; thence north to the City of Santee boundary at x-coordinate 501600; thence west along the City of Santee boundary to x-coordinate 501900; returning to 501900, 3640200; and lands bounded by 501400, 3639800; 501200, 3639800; 501200, 3639700; thence west to the City of Santee boundary at y-coordinate 3639700; thence north along the City of Santee boundary to x-coordinate 501400; returning to 501400, 3639800; and beginning at 501000, 3639600; thence west to the City of Santee boundary at y-coordinate 3639600; thence northeast along the City of Santee boundary to x-

coordinate 501000; returning to 501000,  
3639600; and lands bounded by 500900,  
3639100; 500800, 3639100; 500800,  
3638800; 500700, 3638800; 500700,

3638500; thence west to the City of  
Santee boundary at y-coordinate  
3638500; thence northeast along the  
City of Santee boundary to x-coordinate

500900; thence returning to 500900,  
3639100.

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\* \* \* \* \*

Dated: November 1, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-22190 Filed 11-8-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 051031284-5284-01; I.D. 102605B]

RIN 0648-AT64

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Atlantic; Commercial Spanish Mackerel Fishery of the Atlantic; Control Date**

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

**ACTION:** Advance notice of proposed rulemaking; consideration of a control date.

**SUMMARY:** This notice announces the South Atlantic Fishery Management Council (SAFMC) is considering additional management measures to limit entry into the commercial fishery for Spanish mackerel in the exclusive economic zone of the Atlantic (South Atlantic EEZ). Possible measures include the establishment of a limited entry program to control participation or effort in the commercial Spanish mackerel fishery in the Atlantic. If a limited entry program is established, the SAMFC is considering June 15, 2004, as a possible control date.

**DATES:** Comments must be submitted by December 9, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: 0648-

AT64.ANPR@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: 0648-AT64.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

- Fax: 727-824-5308.

**FOR FURTHER INFORMATION CONTACT:**

Steve Branstetter, 727-824-5305.

**SUPPLEMENTARY INFORMATION:** The commercial fishery for Spanish mackerel in the Atlantic EEZ is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Atlantic and Gulf of Mexico (FMP). The FMP was prepared jointly by the SAFMC and the Gulf of Mexico Fishery Management Council (GMFMC) and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The SAFMC anticipates that future action may be necessary to control effort in the Atlantic Spanish mackerel fishery by restricting the number of participants. The SAFMC has concerns about increasing fishing effort in the Atlantic EEZ and wants to prevent the possibility of the development of excess harvesting capacity for the Spanish mackerel fishery of the region. Should the SAFMC and GMFMC take future action to restrict participation in the fishery, they may use June 15, 2004, as a possible control date. This control date would replace an existing control date of July 2, 1993 (58 FR 35914, July 2, 1993). Implementation of any program to restrict access in the Atlantic

Spanish mackerel fishery would require preparation of an amendment to the FMP and publication of a notice of availability of the amendment with a comment period, publication of a proposed rule with a public comment period, approval of the amendment, and issuance of a final implementing rule.

Consideration of a control date does not commit the SAFMC, GMFMC, or NMFS to any particular management regime or criteria for entry into the commercial Spanish mackerel fishery. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. Use of the control date in future management actions would mean that anyone entering the fishery after the control date would not be assured of future access. Nevertheless, even fishermen who are permitted prior to the control date also are not guaranteed future participation in a fishery. The SAFMC may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry into the fishery. The SAFMC subsequently may choose a different control date, or they may choose a management regime without using a control date. The SAFMC also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

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

Dated: November 4, 2005.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 05-22364 Filed 11-8-05; 8:45 am]

BILLING CODE 3510-22-S

# Notices

Federal Register

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Wednesday, November 9, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

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

the collection of information unless it displays a currently valid OMB control number.

### Risk Management Agency

*Title:* Request for Applications for Research Partnerships.

*OMB Control Number:* 0563-0065.

*Summary of Collection:* The Federal Crop Insurance Act of 2002 authorizes the Federal Crop Insurance Corporation to enter into partnerships with public and private entities for the purpose of increasing the availability of risk management tools for producers of agricultural commodities. The Risk Management Agency (RMA) has developed procedures for the preparation, submission and evaluation of applications.

*Need and Use of the Information:* RMA will use the information to determine applicant eligibility and to evaluate the applications. The qualifying applicants are ranked and the scores are used for the final decision on awards. If the information is not collected, the consequences would be a missed opportunity to improve and or develop new risk management tools for agricultural producers. The impact would affect those segments of agriculture lacking access to existing risk management tools.

*Description of Respondents:* State, Local, or Tribal Government; not-for-profit Institutions.

*Number of Respondents:* 100.

*Frequency of Responses:* Reporting: Occasion.

*Total Burden Hours:* 3,533.

*Title:* Risk Management and Crop Insurance Education; request for Applications.

*OMB Control Number:* 0563-0067.

*Summary of Collection:* The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Section 1508(k) authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to insurers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. FCIC operating through the Risk Management Agency (RMA) has two application programs to carry out certain risk management education provisions of the Federal Crop Insurance Act. The two educational programs requiring application are: to establish crop insurance education and information

programs in States that have been historically underserved by the Federal Crop Insurance Program; and to provide agricultural producers with training opportunities in risk management with a priority given to producers of specialty crops and underserved commodities. Funds are available to fund parties willing to assist RMA in carrying out local and regional risk management can crop insurance education programs.

*Need and Use of the Information:* Applicants are required to submit completed application packages in hard copy to RMA. RMA and review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding. For applicants that are selected, the information will be used to create the terms of cooperative agreements between the applicant and the agency and will not be shared outside of RMA.

*Description of Respondents:* Not-for-profit institutions; business or other for-profit; State, Local, or Tribal Government.

*Number of Respondents:* 220.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 2,255.

**Charlene Parker,**

*Departmental Information Clearance Officer.*  
[FR Doc. 05-22284 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the

burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA\_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

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

#### Forest Service

*Title:* Evaluating Community Knowledge, Beliefs, Attitudes, and Preference Concerning Fire and Fuels Management in Southwestern Forest, Woodland and Grassland Ecosystems.

*OMB Control Number:* 0596-NEW.

*Summary of Collection:* Although fire is increasingly recommended as a fuels reduction tool on both public and private lands, controversy often inhibits its use. Insufficient communication and understanding between land managers and the public frequently contribute to these difficulties. If managers do not have adequate information concerning public attitudes and action concerning wildfire risk reduction behavior, then managers may not make well-informed decisions concerning appropriate communication techniques and needed public education information. In order to design and implement successful, socially acceptable fire and fuels management policies and programs, managers need to better understand the public's knowledge, attitudes and practices concerning wildfire.

*Need and Use of the Information:* The Forest Service will collect information from the general public residing in Arizona and New Mexico. The information will be collected using a mail survey to randomly selected households. The collected information will include: (1) Attitudes and

preferences toward wildfire and fire management alternatives for public lands, (2) risk reduction behaviors that homeowners and individual have undertaken to minimize wildfire risk, (3) sources of information regarding wildfires and wildfires risk reduction, and (4) socioeconomic information.

*Description of Respondents:*

Individuals or households.

*Number of Respondents:* 2,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 667.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 05-22285 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA\_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

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

### Rural Housing Service

*Title:* 7 CFR 3550—Direct Single Family Housing Loan and Grant Program, HB-1-3550, HB-2-3550.

*OMB Control Number:* 0575-0172.

*Summary of Collection:* The Rural Housing Service (RHS) is a credit agency for rural housing and community development within the Rural Development mission area of the Department of Agriculture. Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to administer such programs and to prescribe regulations to ensure that these loans and grants provided with Federal Funds are made to eligible applicants for authorized purposes, and that subsequent servicing and benefits provided to borrowers are consistent with the authorizing statute. RHS offers a supervised credit program to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals living in rural areas. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as 1%. The information requested by RHS is vital to be able to process applications for RHS assistance and make prudent credit and program decisions. RHS will collect information using several forms.

*Need and Use of the Information:* RHS will collect information to verify program eligibility requirements; continued eligibility requirements for borrower assistance; servicing of loans; eligibility for special servicing assistance such as: payment subsidies, moratorium (stop) on payments, delinquency workout agreements; liquidation of loans; and, debt settlement. The information is used to ensure that the direct Single Family Housing Programs are administered in a manner consistent with legislative and administrative requirements. Without the information RHS would be unable to determine if a borrower would qualify for services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes.

*Description of Respondents:*

Individuals or households; Business or other for-profit; Not-for-profit

institutions; State, Local or Tribal Government.

*Number of Respondents:* 300,000.

*Frequency of Responses:* Reporting: On occasion; Annually.

*Total Burden Hours:* 454,539.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 05-22286 Filed 11-8-05; 8:45am]

**BILLING CODE 3410-XT-M**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 3, 2005.

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

*OIRA\_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

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### Animal and Plant Health Inspection Service

*Title:* Importation of Pork-Filled Pasta.

*OMB Control Number:* 0579-0214.

*Summary of Collection:* The Animal and Plant Health Inspection Service (APHIS) is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. 9 CFR 94 Section 94-12 contains, among other things, specific processing, recordkeeping, and certification requirements for pork-filled pasta products exported to the United States from regions affected with swine vesicular disease. The regulations require that a certificate stating that the product has been handled and processed according to the requirements set forth in the regulations accompany the pork-filled pasta products.

*Need and Use of the Information:* The certificate must be completed and signed by the issuing official, and contains such information as the origin of the meat used in the product, the name and location of the facility that processed the product, and the product's intended destination. Without the information, it would significantly cripple APHIS' ability to ensure that pork-filled pasta from certain regions pose a minimal risk of introducing swine vesicular disease into the United States.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 5.

*Frequency of Responses:*

Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 125.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 05-22336 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### Information Collection: Assignments of Payment and Joint Payment Authorization

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) is seeking comments from all interested individuals and organizations on the

extension of an approved information collection. The information collection is supporting the regulation of 7 CFR Part 1404, which provides for the voluntary assignment of cash payments made by Farm Service Agency or CCC to a third party. In addition, a payment recipient may voluntarily elect to have a cash payment made jointly to the payment recipient and a third party.

**DATES:** Comments on this notice must be received on or before January 9, 2006 to be assured consideration.

**Addresses:** Comments must be sent to Farm Service Agency, USDA, Attn: Deborah Simmons, Financial Specialist, FMD, Stop 0561, 1400 Independence Ave, SW., Washington, DC and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be also submitted by e-mail to:

*Debbie.Simmons@wdc.usda.gov* or by fax to: (703) 305-1144. Copies of the information collection may be requested from Ms. Simmons at the above address.

**FOR FURTHER INFORMATION CONTACT:** Deborah Simmons, Financial Specialist, (703) 305-1309.

#### SUPPLEMENTARY INFORMATION:

*Title:* Assignment of Payments and Joint Payment Authorization.

*Forms:* CCC-36, "Assignment of Payment", CCC-37, "Joint Payment Authorization", CCC-251, "Notice of Assignment", and CCC-252, "Instrument of Assignment".

*OMB Control Number:* 0560-0183.

*Type of Request:* Extension.

*Abstract:* Section 4 (j) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b (j)) authorizes CCC to determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid. Pursuant to this authority, CCC allows producers to assign certain payments. Any such assignment must be made in accordance with the regulations of 7 CFR Part 1404. There are no regulations governing joint payments, but this service is offered as a result of public requests for this type of payment option.

*Estimate of Respondent Burden:* Public reporting burden for this collection of information is estimated to average 10 minutes per response for CCC-36, CCC-37, or CCC-251, or 5 minutes per response for CCC-252.

*Respondents:* Participants in FSA or CCC farm programs.

*Estimated Number of Respondents:* 50,000 for CCC-36; 20,000 for CCC-37, and 450 for CCC-251 or CCC-252.

*Estimated Total Annual Burden on Respondents:* 30 minutes (this estimate

includes 20 minutes time for applicants to request forms from FSA or locate forms in the Web site).

*Comments are invited regarding:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Signed at Washington, DC, on November 2, 2005.

**Teresa C. Lasseter,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-22277 Filed 11-8-05; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Tahoe National Forest; Sierraville Ranger District; California; Phoenix Project**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The USDA Forest Service, Tahoe National Forest, Sierraville Ranger District gives notice of the Agency's intent to prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of applying silvicultural and fuel treatment prescriptions to treatment units totaling approximately 5,057 acres. This project is part of the Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project. The proposed treatments would take place on the Sierraville Ranger District, and be implemented within the next 5 years.

**DATES:** Comments concerning the scope of the analysis must be received by November 18, 2005. The Draft Environmental Impact Statement (DEIS) is expected to be completed in March of 2006, and the Final Environmental

Impact Statement (FEIS) is expected to be completed in July of 2006.

**ADDRESSES:** Send written comments to Jeff Leach, USDA Forest Service, Sierraville Ranger District, P.O. Box 95 (317 South Lincoln), Sierraville, CA 96126, office hours 8 a.m. to 4:30 p.m., Monday–Friday; telephone (530) 994–3401; FAX (530) 994–3143; e-mail: [comments-pacificsouthwest-tahoe-sierraville@fs.fed.us](mailto:comments-pacificsouthwest-tahoe-sierraville@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Jeff Leach or Timothy Evans at the above addresses and phone number.

**SUPPLEMENTARY INFORMATION:** As part of the HFQLG Act Pilot Project, the Sierraville District completed the planning and NEPA environmental analysis for the Euro and Checkmate Projects. The District Ranger signed the Decision Notice for the Euro Project on May 2, 2005, and the Decision Notice of the Checkmate Project on June 7, 2005. Four Notices of Appeal were filed on the Euro Project Decision. Because of an appeal on the Euro Project Decision by the Lahontan Region of the California Regional Water Quality Control Board, and the denial of a Conditional Waiver of Discharge Requirements for Discharges Related to Timber Harvest Activities by the Central Valley Region, both the Euro and Checkmate Project Decisions were withdrawn on June 28, 2005. Since that time, four public field trips took place to review some of the treatments of both the Euro and Checkmate projects. Participants in at least one of these field trips included representatives from both the Lahontan and Central Valley Regions of the California Water Control Board, representatives of some of the organizations that filed appeals of the Euro Decision, and members of the interested public, including representatives of the Quincy Library Group. After considering the discussions that took place on these field trips, the Sierraville District Ranger decided to combine the Euro and Checkmate Projects into one proposed action (now titled the Phoenix Project) and to issue this Notice of Intent to prepare an EIS.

#### **Purpose and Need for Action**

The Phoenix Project is being proposed to implement the Herger-Feinstein Quincy Library Group Forest Recovery Act of October 12, 1998 (HFQLG). The underlying need for the pilot project is to fulfill the Secretary of Agriculture's statutory duty under the HFQLG Act, to the extent consistent with applicable Federal Law. That duty is to test and demonstrate the effectiveness of certain resource management activities

designed to meet ecologic, economic, and fuel reduction objectives on the Lassen and Plumas National Forests and Sierraville District of the Tahoe National Forest. The Act requires the Secretary to conduct a pilot project for a period of up to 5 years (recently extended through 2009). To accomplish the purpose of the Act, resource management activities are required, including construction of a strategic system of Defensible Fuel Profile Zones (DFPZs), group selection harvest and individual tree selection harvest, and riparian management (watershed restoration) projects. The Act directs the Forest Service to construct 40,000 to 60,000 acres of DFPZs each year. The objectives of the Phoenix Project are:

1. To reduce negative effects from catastrophic wildfire on National Forest, private and state lands, and local communities.

2. To create a safer, more effective fire suppression environment and provide connecting links to existing fuelbreaks.

3. To create the pre-conditions necessary for reintroduction of low intensity fire to the ecosystem, thereby beginning the process of restoring fire to its natural role in the ecology of the project area.

4. To improve timber stand health, vigor, and resistance to fire, insects, and disease.

5. Implement riparian management to restore the health and vigor of aspen stands.

6. To protect and improve habitat for Threatened, Endangered, and Sensitive Species, and Management Indicator Species, both plant and animal.

7. To generate economic activity, income and employment in support of rural community stability.

#### **Proposed Action**

1. Implement mechanical thinning from below on approximately 2,657 acres. The thinning prescription would be designed to retain all live trees greater than or equal to 30 inches DBH.

2. Implement group selection harvest with groups less than or equal to 2.0 acres in size, on approximately 390 acres.

3. Implement aspen restoration on approximately 217 acres. Conifers would be removed to a 40-inch diameter limit in areas where conifers are crowding out aspen trees.

4. Implement hand thinning and piling on approximately 991 acres. The hand thinning would thin from below to an upper diameter limit of less than or equal to 10 inches DBH.

5. Implement thinning by mechanical mastication of brush and saplings on approximately 802 acres of young



(approximately 20 years old or less) conifer plantations and natural stands.

6. Retain at least three large logs/acre when available, 12 inches diameter or larger at midpoint.

7. Retain at least three of the largest available snags per acre in eastside pine and mixed conifer type, six of the largest available snags in the red fir forest type.

8. Apply Sporax (trade name for sodium tetraborate decahydrate) to cut stumps  $\geq$  14 inches stump diameter to reduce the spread of the root rot *Heterobasidion annosum*.

9. Refine DFPZ boundaries identified in the Herger-Feinstein Quincy Library Group Forest Recovery Act (HFQLG) FEIS (1999).

10. Implement and maintenance to provide for public and contractor safety, road surface protection, and erosion control.

11. Implement road repair, and road decommissioning to improve watershed conditions.

12. Use approximately 6.9 miles of temporary roads to provide short-term access to the treatment area, and decommission these roads after the project is completed.

13. Reconstruct approximately 2.1 miles of existing National Forest System roads to improve access for large equipment and trucks to treatment areas, while also improving watershed conditions.

14. Construct 2 new permanent roads totaling approximately 1.7 miles in length to provide access to treatment areas and improve the long-term effectiveness of DFPZs.

15. Apply standards and guidelines from the Tahoe National Forest Land and Resource Management Plan (LMP) (1990), as amended by the HFQLG FEIS Record of Decision (ROD (1990), the HFQLG FSEIS ROD (2003), and the Sierra Nevada Forest Plan Amendment (SNFPA) FSEIS ROD (2004). Also apply standard management requirements such as contract clauses designed to protect forest resources, Best Management Practices (BMPs) for water quality protection, and other mitigation measures specific to this project. All of the proposed treatments would follow the standards and Guidelines applicable to the HFQLG Pilot Project Area described in Appendix A, (Section E, pages 66–69) of the SNFPA ROD.

#### Possible Alternatives

Alternatives being considered at this time include: 1) proposed action; 2) no action. Additional alternatives to the proposed action would be based on significant issues identified during the scoping process.

#### Responsible Official

The District Ranger, Sierraville Ranger District, Tahoe National Forest, is the responsible official making the decision, and can be reached at P.O. Box 95, Sierraville, CA 96126. As the responsible official, the District Ranger will document the decision and reasons for the decision in the Record of Decision (ROD), which will be published along with the FEIS.

#### Nature of Decision To Be Made

The decision to be made is whether to implement the proposed action as described above, to vary the location or design of the project to meet the purpose and need while addressing issues raised in public scoping, or to take no action at this time.

#### Scoping Process

Public participation is viewed as an integral part of the environmental analysis. The Forest Service will be seeking points of dispute, disagreement or debate from Federal, State, and local governmental agencies as well as from individuals or organizations that may be potentially interested or affected by the proposed action. A scoping letter will be mailed to persons who have expressed interest in the proposed action based on notifications in the Tahoe National Forest Quarterly Schedule of Proposed Actions and by notification through a published legal notice in the *Mountain Messenger* (the newspaper of record for this project), Downieville, California, and the *Sierra Booster*, Loyalton, California. In addition, persons who provided comment on the Euro and Checkmate Projects will be mailed scoping letters.

#### Comment Requested

This notice of intent initiates the scoping process which guides the development of the EIS. Comments submitted during the scoping process should be in writing or e-mail, and should be specific to the proposed action. The comments should describe as clearly and completely as possible any points of dispute, debate or disagreement the commenter has with the proposal. Once scoping letters are received, the District shall identify all potential issues, eliminate non-significant issues or those covered by another environmental analysis, identify significant issues to analyze in depth, develop additional alternatives to address those significant issues, and identify potential environmental effects of the proposed action as well as all fully analyzed alternatives.

#### Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Dated: October 31, 2005.

**Sam J. Wilbanks,**

*District Ranger.*

[FR Doc. 05-22350 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Sanders County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on November 17 at 7 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

**DATES:** November 17, 2005.

**ADDRESSES:** The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

#### FOR FURTHER INFORMATION CONTACT:

Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826-3821.

**SUPPLEMENTARY INFORMATION:** Agenda topics include reviewing progress on current RAC projects, and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, and Sanders County Ledger.

Dated: November 1, 2005.

**Randy Hojem,**

*DFO, Plains Ranger District, Lolo National Forest.*

[FR Doc. 05-22353 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Southeast Alaska Federal Subsistence Regional Advisory Council Meeting

**AGENCY:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**DATES:** December 1, 2005.

*Time And Location:* 9 a.m., Alaska Standard Time, by teleconference. For how to participate, please see **SUPPLEMENTARY INFORMATION** below.

**SUMMARY:** This notice informs the public that the Southeast Alaska Federal Subsistence Regional Advisory Council will hold a public meeting on December 1, 2005. The public is invited to participate and to provide oral testimony.

**SUPPLEMENTARY INFORMATION:** The Southeast Regional Advisory Council will meet by teleconference on December 1, 2005, for the purpose of reviewing and providing recommendations on proposals submitted to the Alaska Board of Fisheries, conferring on subsistence wildlife proposals, and discussing other matters affecting subsistence users in Southeast Alaska. This meeting is open to the public to provide testimony. To participate, call toll free, 1-800-369-1643. The Teleconference Leader is Mr. Bob Schroeder and the Passcode is 21119.

#### FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o Office of Subsistence Management, U.S. Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; telephone (907) 786-3888. For questions related to subsistence management issues on National Forest Service lands, contact Steve Kessler, Subsistence Program Leader, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; telephone (907) 786-3592.

Dated: October 21, 2005.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: October 20, 2005.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

[FR Doc. 05-22313 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-11-P 4310-55-P 4310-55-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### Basin Electric Power Cooperative, Inc.; Notice of Intent To Hold Public Scoping Meetings and Prepare an Environmental Impact Statement

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Intent to Hold Public Scoping Meetings and Prepare an Environmental Impact Statement.

**SUMMARY:** The Rural Utilities Service (RUS) intends to hold public scoping meetings and prepare an environmental

impact statement (EIS) in connection with possible impacts related to a project being proposed by Basin Electric Power Cooperative, Inc. (Basin Electric), of Bismarck, North Dakota. The proposal consists of the construction and operation of a coal-fired electric generation facility referred to as the Dry Fork Station, consisting of a single maximum net 385 Megawatt (MW) unit, at a site in Gillette, Wyoming, and the construction of 130 miles of 230 kilovolt (kV) transmission line in Campbell and Sheridan counties, referred to as the Hughes Transmission Project.

**DATES:** RUS will conduct the two public scoping meetings in an open-house format on December 6, 2005, from 4 p.m. to 7 p.m., at the Holiday Inn, 1809 Sugarland Drive, Sheridan, Wyoming, and on December 7, 2005, from 4 p.m. to 7 p.m., at the Clarion Western Plaza, 2009 S. Douglas Highway, Gillette, Wyoming.

#### FOR FURTHER INFORMATION CONTACT:

Richard Fristik, Senior Environmental Protection Specialist, Water and Environmental Programs, Rural Development, Utilities Programs, 1400 Independence Ave. SW., Mail Stop 1571, Washington DC 20250-1571, telephone: (202) 720-5093 or e-mail: [richard.fristik@wdc.usda.gov](mailto:richard.fristik@wdc.usda.gov), or Jim K. Miller, Basin Electric Power Cooperative, Inc., 1717 East Interstate Avenue, Bismarck, ND 58503-0564, telephone: (701) 223-0441 or e-mail: [jkmiller@bepec.com](mailto:jkmiller@bepec.com).

**SUPPLEMENTARY INFORMATION:** Basin Electric proposes to construct and operate a (maximum net rating) 385 MW (422 MW maximum gross) base load coal-fired power plant and transmission line interconnection near Gillette, Wyoming. Basin Electric proposes to construct a facility in this area due to the proximity of the fuel source in the Powder River Basin (PRB) and delivery of the power to its membership. Basin Electric is requesting RUS to provide financing for the proposed project.

The transmission line would consist of approximately 130 miles of 230kV transmission line that will connect the Hughes Substation east of Gillette, Wyoming, to the Carr Draw Substation west of Gillette and a proposed substation northeast of Sheridan, Wyoming. The proposed schedule developed by Basin Electric would place the transmission line in operation by the end of 2008, while the generating facility would be commercially operational by 2011.

Alternatives to be considered by RUS include no action, purchased power, load management, renewable energy sources, distributed generation, and

alternative site locations. Comments regarding the proposed project may be submitted (orally or in writing) at the public scoping meetings or in writing within 30 days after the December 7, 2005, scoping meeting to RUS at the address provided in this notice.

Proposal development documents—Alternative Evaluation Study, Macro-Corridor Analysis and Site Selection Study—are available for public review at RUS or Basin Electric, at the addresses provided in this notice. These studies are also available at the Campbell County Public Library located at 2101 South 4J Road in Gillette, Wyoming; the Sheridan County Fulmer Public Library located at 335 W. Alger Street in Sheridan, Wyoming; the Clearmont Branch Library located at 1240 Front Street, Clearmont, Wyoming; the Moorcroft Public Library located at 105 E. Converse, Moorcroft, Wyoming; the Johnson County Library located at 171 N. Adams, Buffalo, Wyoming; the PRECorp Corporate Headquarters located at 221 Main Street, Sundance, Wyoming; and at the Basin Electric office located at 2201 South Douglas Highway, Suite 160 in Gillette, Wyoming.

From information provided in the studies mentioned above, and using input provided by government agencies, private organizations, and the public, RUS will prepare a Draft EIS. The Draft EIS will be available for review and comment for 45 days after distribution. A Final EIS will then be prepared that considers all comments received. The Final EIS will be available for review and comment for 30 days after distribution. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft and Final EIS and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposed projects will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR Part 1794).

Dated: November 1, 2005.

**Nurul Islam,**

*Acting Director, Engineering and Environmental Staff.*

[FR Doc. 05-22278 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-15-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 110405A]

#### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee on November 29, 2005, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Tuesday, November 29, 2005, at 9 a.m.

**ADDRESSES:** *Meeting address:* The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339-2200; fax: (508) 337-8677.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The Capacity Committee will review the Terms of Reference adopted by the Council. Northeast Fisheries Science Center (NEFSC) and National Marine Fisheries Service (NMFS) staff will present reports covering a range of subjects, including: overview of industry-funded buyback programs around the country as well as approaches that could be adopted in New England; definitions of capacity and the assessment of overcapacity; the Food and Agricultural Organization (FAO) overcapacity reduction initiative and NMFS commitment; institutional arrangements for managing capacity including collaborative management approaches; and, guiding principals and evaluation criteria for managing capacity. Council staff will provide a brief report on NMFS' Overcapacity Workshop held in September. Following discussion of these items, the Committee will proceed with the initial development of capacity management alternatives for groundfish and scallop fisheries.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978-465-0492, at least 5 days prior to the meeting date.

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

Dated: November 4, 2005.

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E5-6176 Filed 11-8-05; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of an Import Level and Staged Entry Procedures for Shipments of Cotton, Wool and Man-Made Fiber Socks (Categories 332/432/632 part) Produced or Manufactured in the People's Republic of China.

November 4, 2005.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Directive to Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** November 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In the letter published below, the Chairman of CITA directs the Commissioner, U.S. Customs and Border Protection, to establish the following import level and staged entry procedures.

Pursuant to the Memorandum of Understanding, signed and dated

November 1, 2005, between the Governments of the United States and the People's Republic of China, the Government of the United States is controlling imports of Chinese-origin cotton, wool and man-made fiber socks (Categories 332/432/632 part) exported from China during the period from November 1, 2005 through December 31, 2005, at a level of 10,298,023 dozen pairs. This agreed level which was reached on November 1, 2005, as a result of consultations between the Government of the United States and the People's Republic of China, under the provisions of Paragraph 242 of the Report of the Working Party for the Accession of China to the World Trade Organization, concerns trade in Chinese-origin cotton, wool and man-made fiber socks. There is no requirement for a textile visa or for an Electronic Visa Information System (ELVIS) transmission for entry of these products.

Consistent with previously established practice for restraints established under paragraph 242 of the Report of the Working Party for the Accession of China to the World Trade Organization, shipments in excess of this agreed level will be subject to delayed and staged entry. Specifically, shipments in excess of this level will not be allowed entry prior to February 1, 2006, at which time, shipments totaling no more than 5 percent of this quota (514,901 dozen pairs) will be allowed entry for the month. An additional 5 percent will be allowed entry each succeeding month until all overshipments are allowed entry.

Shipments in excess of the safeguard limit for socks exported from China during the period of October 29, 2004 through October 28, 2005 remain subject to the staged entry quota and procedures established in a notice and letter to the Commissioner, U.S. Customs and Border Protection, published in the **Federal Register**. See 70 FR 21399 (April 26, 2005). This is separate from the agreed level and staged entry level for goods exported from China during the period of November 1, 2005 through December 31, 2005.

**James C. Leonard III**,  
*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 4, 2005.

Commissioner,  
*Bureau of Customs and Border Protection,*  
*Washington, DC 20229.*

Dear Commissioner: Pursuant to the Memorandum of Understanding between the Governments of the United States of America

and the People's Republic of China, concerning exports to the United States of socks during the period from November 1, 2005 through December 31, 2005, you are directed to prohibit, effective November 1, 2005, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber socks in Category 332/432/632 part, produced or manufactured in the People's Republic of China, during the two month period beginning on November 1, 2005 and extending through December 31, 2005 in excess of 10,298,023 dozen pairs<sup>1</sup>. Products which have been exported from China prior to November 1, 2005, shall not be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico. The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

This directive also provides instructions on permitting entry of goods shipped in excess of the agreed level on socks in categories 332/432/632 part, which covers goods exported from China during the period of November 1, 2005 through December 31, 2005. For all shipments exported from China that exceed that level, you are directed to deny entry until February 1, 2006, subject to the following procedure. From February 1 through February 28, 2006, you are directed to permit entry of goods in an amount equal to 5 percent (514,901 dozen pairs) of the agreed level of 10,298,023 dozen pairs. For each succeeding period, beginning on the first of the month, and extending through the last day of the month, you are to permit entry of goods in an amount equal to 514,901 dozen pairs until all shipments in excess of the agreed level have been entered.

The following clarifies the precise quantity to be allowed entry each month for staged entry of overshipments of the safeguard which covered exports from China during the period of October 29, 2004 through October 28, 2005. The agreed level and staged entry procedures for goods exported from China during the period from November 1, 2005 through December 31, 2005 do not affect goods shipped in excess of the safeguard limit on socks which covered exports from China during the period of October 29, 2004 through October 28, 2005, which remain subject to the staged entry procedures which were set forth in a separate directive, dated April 26, 2005. That directive provided that shipments in excess of the limit for the period of October 29, 2004 through October 28, 2005 will be denied entry until November 29, 2005, and at that time no more than 5 percent (2,121,700 dozen pairs) will be allowed entry from the period of November 29, 2005 through December 28, 2005. For each succeeding period, beginning on the

<sup>1</sup> Category 632 Part; Socks: only HTS numbers 6115.93.6020, 6115.93.9020, 6115.99.1420 and 6115.99.1820

29th of the month, and extending through the 28th of the following month, you are directed to permit entry of goods in an amount equal to 2,121,700 dozen pairs, until all shipments in excess of the safeguard limit which covered exports from China during the period of October 29, 2004 through October 28, 2005 have been entered.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
James C. Leonard III,  
*Chairman, Committee for the Implementation of Textile Agreements.*  
[FR Doc.05-22426 Filed 11-4-05; 4:50 pm]

**BILLING CODE 3510-DS**

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam**

November 3, 2005.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** November 10, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (<http://www.cbp.gov>), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>). Also

see 69 FR 57272, published in the **Federal Register** on September 24, 2004.

**James C. Leonard III,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 3, 2005.

Commissioner,  
*Bureau of Customs and Border Protection,*  
*Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 20, 2004, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2005 and extends through December 31, 2005.

Effective on November 10, 2005, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit <sup>1</sup>
301 .....	314,333 kilograms.
332 .....	109,684 dozen pairs.
341/641 .....	1,020,163 dozen.
434 .....	19,719 dozen.
620 .....	8,524,789 square meters.
632 .....	123,096 dozen pairs.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2004.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
**James C. Leonard III,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 05–22360 Filed 11–8–05; 8:45 am]

**BILLING CODE 3510–DS**

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to Amend Systems of Records.

**SUMMARY:** The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on December 9, 2005 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Eugenia Harms at (703) 696–6280.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 28, 2005.

**L.M. Bynum,**  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AETC I**

**SYSTEM NAME:**

Cadet Records (June 11, 1997, 62 FR 31793).

**CHANGES:**

\* \* \* \* \*

**SYSTEM LOCATION:**

Delete “20 North Pine Street” and replace with: “551 East Maxwell Boulevard”

\* \* \* \* \*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete second paragraph and replace with: “Field training administration records consist of student performance reports.”

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete paragraph and replace with: “10 U.S.C. Chapter 33, Original Appointments of Regular Officers in Grades Above Warrant Officers; 10 U.S.C. Chapter 103, Senior Reserve Officers’ Training Corps; E.O. 9397 (SSN); Air Force Instruction 36–2011, Air Force Reserve Officers Training Corps (AFROTC); and Air Force Officer Accession and Training School Instruction 36–2011, Administration of Senior Air Force Cadets.”

\* \* \* \* \*

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete “20 North Pine Street” and replace with: “551 East Maxwell Boulevard”

**NOTIFICATION PROCEDURE:**

Delete “20 North Pine Street” and replace with: “551 East Maxwell Boulevard”

**RECORD ACCESS PROCEDURES:**

Delete “20 North Pine Street” and replace with: “551 East Maxwell Boulevard”

**CONTESTING RECORD PROCEDURES:**

Delete “37–132” and replace with: “33–332”

\* \* \* \* \*

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Delete first paragraph and replace with: “Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a confidential source.”

\* \* \* \* \*

**F036 AETC I**

**SYSTEM NAME:**

Cadet Records.

**SYSTEM LOCATION:**

Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110, and portions pertaining to each Reserve Officer Training Corps detachment located at respective detachments. Official mailing addresses are published as an appendix to the Air Force’s compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force Reserve Office Training Corps (AFROTC) cadets applying for, or enrolled or previously enrolled within the past three years, in the professional officers course or the general military course, if the latter participation was in a scholarship status.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Applications for enrollment in the Air Force Reserve Officers’ Training Corps (AFROTC) courses, applications for the AFROTC scholarship program, substantiation records of qualification for the courses or programs, acceptances of applications, awards of scholarships, records attesting to medical, academic, moral and civic qualifications, records recording progress in flying instruction, Euro-NATO Joint Jet Pilot Training (ENJJPT) application data, academic curriculum and leadership training,

counseling summaries, records of disenrollment from other officer candidate training; records of separation or discharge from officer candidate training; records of separation or discharge of prior service members; financial record data, certification of degree requirements; regular appointment nomination data, records tendering and accepting commissions, records verifying national agency checks or background investigation, records required or proffered during investigations for disenrollment, legal opinions, letters of recommendations, corroboration by civil authorities, awards, citations; and allied papers.

Field training administration records consist of student performance reports.

#### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. Chapter 33, Original Appointments of Regular Officers in Grades Above Warrant Officers; 10 U.S.C. Chapter 103, Senior Reserve Officers' Training Corps; E.O. 9397 (SSN); Air Force Instruction 36-2011, Air Force Reserve Officers Training Corps (AFROTC); and Air Force Officer Accession and Training School Instruction 36-2011, Administration of Senior Air Force Cadets.

#### **PURPOSE(S):**

Used for recruiting and qualifying a candidate for acceptance as an AFROTC cadet, continuing the cadet in the program and awarding an Air Force commission.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: 'The Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

#### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Maintained in file folders, notebooks/binders, in computers and on computer output products.

##### **RETRIEVABILITY:**

Retrieved by name, Social Security Number and detachment number.

##### **SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record

system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

#### **RETENTION AND DISPOSAL:**

Records at unit of assignment are destroyed one year after acceptance of commission or one year after disenrollment. Records at HQ AFROTC for disenrolled cadets are destroyed after three years. Computer records are destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

#### **SYSTEM MANAGER(S) AND ADDRESS:**

Director of Senior Program, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110, and Commander of appropriate AFROTC detachment.

Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

#### **NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the AFROTC Detachment Commander at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request for information involving an investigation for disenrollment should be addressed to Commander, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110. Requests should include full name and SSN.

#### **RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the AFROTC Detachment Commander at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request for information involving an investigation for disenrollment should be addressed to Commander, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110. Requests should include full name and SSN.

#### **CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contests and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager.

#### **RECORD SOURCE CATEGORIES:**

Sources of records in the system are educational institutions, secondary and higher learning; government agencies; civilian authorities; financial institutions; previous employers; individual recommendations, interviewing officers; and civilian medical authorities.

#### **EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(5), as applicable, but only to the extent that disclosure would reveal the identity of a confidential source.

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a confidential source.

[FR Doc. 05-21920 Filed 11-8-05; 8:45 am]

BILLING CODE 5001-06-M

## **DEPARTMENT OF DEFENSE**

### **Defense Contract Audit Agency**

#### **Privacy Act of 1974; System of Records**

**AGENCY:** Defense Contract Audit Agency, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The Defense Contract Audit Agency is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552), as amended.

**DATES:** This proposed action will be effective without further notice on December 9, 2005 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to Senior Advisor, Defense Contract Audit Agency, Information and Privacy, CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6201.

**FOR FURTHER INFORMATION CONTACT:** Ms. Debbie Teer at (703) 767-1002.

**SUPPLEMENTARY INFORMATION:** The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 662a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended which requires the submission of a new or altered system report.

Dated: November 1, 2005.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **RDCAA 590.8**

##### **SYSTEM NAME:**

DCAA Management Information System (DMIS) (August 10, 2005, 70 FR 46495).

##### **CHANGES:**

\* \* \* \* \*

##### **CATEGORY OF RECORDS IN THE SYSTEM:**

Delete the following: "records containing reimbursable billing information;"

\* \* \* \* \*

#### **RDCAA 590.8**

##### **SYSTEM NAME:**

DCAA Management Information System (DMIS).

##### **SYSTEM LOCATION:**

Defense Contract Audit Agency, Information Technology Division, System Design and Development Branch, 4075 Park Avenue, Memphis, TN 38111-7492.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DCAA employees.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing employee data; name, Social Security Number, time and attendance, and work schedule; and records containing office information, e.g., duty station address and telephone number.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

##### **PURPOSE(S):**

To provide managers, supervisors, and team members with timely, on-line information regarding audit requirements, programs, and performance. To provide timekeepers with access to time and attendance records.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

##### **STORAGE:**

Records are maintained in an on-line database and on magnetic tape at secure offsite storage.

##### **RETRIEVABILITY:**

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

##### **SAFEGUARDS:**

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

##### **RETENTION AND DISPOSAL:**

Records are retained indefinitely.

##### **SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111-7492.

##### **NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111-7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

##### **RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained

in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111-7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

##### **CONTESTING RECORD PROCEDURES:**

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

##### **RECORD SOURCE CATEGORIES:**

Individual employees, supervisors, time keepers, audit reports and working papers.

##### **EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 05-22070 Filed 11-8-05; 8:45 am]

**BILLING CODE 5001-06-M**

## **DEPARTMENT OF EDUCATION**

### **Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 9, 2006.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information



collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 3, 2005.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

#### **Office of Elementary and Secondary Education**

*Type of Review:* Extension of a currently approved collection.

*Title:* Local-Flex Application (KA).

*Frequency:* Other: One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:* Responses: 80.

Burden Hours: 6400.

*Abstract:* Application for LEAs seeking to enter into local flexibility demonstration agreements ("Local-Flex" agreements). By statute, the Department can select 80 LEAs through a competitive process with which to enter into Local-Flex agreements. These agreements give LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the ESEA in order to meet the State's definition of adequate yearly progress (AYP).

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 02914. When you access the information collection, click on "Download Attachments" to view. Written requests for information should

be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at [Kathy.Axt@ed.gov](mailto:Kathy.Axt@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-22340 Filed 11-8-05; 8:45 am]

BILLING CODE 4000-01-P

#### **DEPARTMENT OF EDUCATION**

##### **A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education**

**AGENCY:** A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, U.S. Department of Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming meeting of A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

**DATES:** Thursday, December 8, 2005, and Friday, December 9, 2005.

*Time:* December 8, 2005: 1 p.m. to 5:30 p.m.; December 9, 2005: 8:30 a.m. to 1 p.m.

**ADDRESSES:** The Commission will meet in Nashville, TN, at the Hilton Nashville Downtown, 121 Fourth Avenue South, Nashville, TN.

#### **FOR FURTHER INFORMATION CONTACT:**

Cheryl Oldham, Executive Director, A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, 400 Maryland Avenue, SW., Washington, DC 20202-3510; telephone: (202) 205-8741.

**SUPPLEMENTARY INFORMATION:** The Commission is established by the Secretary of Education to begin a national dialogue about the future of higher education in this country. The purpose of this Commission is to consider how best to improve our

system of higher education to ensure that our graduates are well prepared to meet our future workforce needs and are able to participate fully in the changing economy. The Commission shall consider federal, state, and local and institutional roles in higher education and analyze whether the current goals of higher education are appropriate and achievable. The Commission will also focus on the increasing tuition costs and the perception of many families, particularly low-income families, that higher education is inaccessible.

The agenda for this second meeting will include panel presentations on the four areas of focus for the commission: access, accountability, affordability, and quality. A written report to the Secretary is due by August 1, 2006.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Tracy Harris at (202) 260-3644 no later than November 28, 2005. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Tracy Harris at (202) 260-3644 or by e-mail at [Tracy.Harris@ed.gov](mailto:Tracy.Harris@ed.gov).

Opportunities for public comment are available through the Commission's Web site at <http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html>. Records are kept of all Commission proceedings and are available for public inspection at the staff office for the Commission's from the hours of 9 a.m. to 5 p.m.

Dated: November 3, 2005.

**Margaret Spellings,**

*Secretary, U.S. Department of Education.*

[FR Doc. 05-22301 Filed 11-8-05; 8:45 am]

BILLING CODE 4000-01-M

#### **DEPARTMENT OF EDUCATION**

##### **Federal Family Education Loan Program**

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice of interest rates for the Federal Family Education Loan Program for the period July 1, 2005, through June 30, 2006.

**SUMMARY:** The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the Federal Family Education Loan (FFEL)



Program for the period July 1, 2005 through June 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Don Watson, U.S. Department of Education, room 11412, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **SUPPLEMENTARY INFORMATION:**

##### **General**

Under title IV, part B of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. section 1071, *et seq.*, most loans made to student and parent borrowers under the FFEL Program have variable interest rates.

The formulas for determining the interest on variable rate FFEL Program loans are established in section 427A of the HEA (20 U.S.C. 1077a).

The interest rates on variable-rate loans are determined annually and apply to the following 12-month period beginning July 1 and ending June 30.

As described below, interest rate caps apply to most FFEL Program loans.

FFEL interest rate formulas use the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before June 1 of each year plus a statutorily established add-on to determine the variable interest rate for—

- FFEL fixed-rate Stafford loans first disbursed before October 1, 1992, that have been converted to variable-rate loans;
- All FFEL Subsidized and Unsubsidized Stafford Loans first disbursed on or after October 1, 1992;
- FFEL PLUS loans first disbursed on or after July 1, 1998; and
- FFEL Consolidation Loans for which the Consolidation Loan application was received by the lender on or after November 13, 1997, and before October 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 31, 2005, which is used to calculate the interest rates for the one-year period beginning on July 1, 2005, is 2.998 percent, which is rounded to 3.00 percent.

For FFEL PLUS loans first disbursed before July 1, 1998, interest rates are calculated based on the weekly average of a 1-year constant maturity Treasury

yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26.

The weekly average of the 1-year constant maturity Treasury yield for the last calendar week ending on or before June 27, 2005 is 3.40 percent.

##### **Interest Rates for “Converted” Variable-rate FFEL Stafford Loans**

1. Under section 427A(i)(7) of the HEA (20 U.S.C. 1077a (i)(7)) loans that were originally made with a fixed interest rate of eight percent with an increase to ten percent four years after commencement of the repayment period were converted to a variable interest rate that may not exceed ten percent: The interest rate for these loans for the period from July 1, 2005, through June 30, 2006, is 6.25 percent (3.00 percent plus 3.25 percent).

2. Loans with fixed interest rates of seven percent, eight percent, nine percent, or eight percent with an increase to ten percent four years after commencement of the repayment period, that were subject to the provisions of section 427A(i)(3) of the HEA (20 U.S.C. 1077a(i)(3)) and were converted to variable-rate loans—the interest rate may not exceed seven percent, eight percent, nine percent, or ten percent, respectively: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.10 percent (3.00 percent plus 3.1 percent).

##### **Interest Rates for Variable-Rate FFEL Stafford Loans**

1. FFEL Stafford loans made to “new” borrowers for which the first disbursement was made (a) on or after October 1, 1992, but before July 1, 1994, or (b) on or after July 1, 1994, for a period of enrollment ending before July 1, 1994 (i.e. a late disbursement)—the interest rate may not exceed nine percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.10 percent (3.00 percent plus 3.1 percent).

2. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for periods of enrollment that include or begin on or after July 1, 1994, for which the first disbursement was made on or after July 1, 1994, but before July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.10 percent (3.00 percent plus 3.1 percent).

3. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, on or after July 1, 1995, but before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, or deferment period: The interest rate for the period from July 1, 2005, through June 30, 2006, is 5.50 percent (3.00 percent plus 2.5 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.10 percent (3.00 percent plus 3.1 percent).

4. FFEL Stafford loans, first disbursed on or after July 1, 1998, but before July 1, 2006—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period from July 1, 2005, through June 30, 2006, is 4.70 percent (3.00 percent plus 1.7 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2005, through June 30, 2006, is 5.30 percent (3.00 percent plus 2.3 percent).

##### **Interest Rates for FFEL PLUS and FFEL Supplemental Loans for Students (SLS) Loans**

1. Variable-rate FFEL PLUS and FFEL SLS loans first disbursed before October 1, 1992—the interest rate may not exceed 12 percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.65 percent (3.40 percent plus 3.25 percent).

2. FFEL SLS loans first disbursed on or after October 1, 1992, for a period of enrollment beginning before July 1, 1994—the interest rate may not exceed 11 percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.50 percent (3.40 percent plus 3.10 percent).

3. FFEL PLUS loans first disbursed on or after October 1, 1992, but before July 1, 1994—the interest rate may not exceed ten percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.50 percent (3.40 percent plus 3.10 percent).

4. FFEL PLUS loans first disbursed on or after July 1, 1994, but prior to July 1, 1998—the interest rate may not exceed nine percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.50 percent (3.40 percent plus 3.10 percent).

5. FFEL PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2006—the interest rate may not exceed nine percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.10 percent (3.00 percent plus 3.1 percent).

##### **Interest Rates for FFEL Consolidation Loans**

1. FFEL Consolidation loans for which the consolidation loan was made by the lender before July 1, 1994—the interest rate is the weighted average of

the interest rates on the loans consolidated, rounded to the nearest whole percent, but may not be less than nine percent.

2. FFEL Consolidation loans for which the consolidation loan was made by the lender on or after July 1, 1994, and before November 13, 1997—the interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

3. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after November 13, 1997, and before October 1, 1998—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2005, through June 30, 2006, is 6.10 percent (3.00 percent plus 3.1 percent).

4. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after October 1, 1998, and before July 1, 2006—the interest rate may not exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher  $\frac{1}{8}$  of one percent.

5. If a portion of a Consolidation loan is attributable to a loan made under subpart I of part A of title VII of the Public Health Service Act, the maximum interest rate for that portion of a Consolidation loan is determined annually, for each 12-month period beginning on July 1 and ending on June 30. The interest rate equals the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending prior to July 1, plus three percent. For the quarter ending before July 1, 2005, the average 91-day Treasury bill rate was 2.943 percent (rounded to 2.94 percent). The maximum interest rate for the period from July 1, 2005, through June 30, 2006, is 5.94 percent (2.94 percent plus 3.0 percent).

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official

edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>

**Program Authority:** 20 U.S.C. 1087 *et seq.*

Dated: November 3, 2005.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 05-22365 Filed 11-8-05; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### William D. Ford Federal Direct Loan Program

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice of interest rates for the William D. Ford Federal Direct Loan Program for the period July 1, 2005 through June 30, 2006.

**SUMMARY:** The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program for the period July 1, 2005 through June 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Don Watson, U.S. Department of Education, room 114I2, UCP, 400 Maryland Avenue, SW., Washington, DC 20202-5400. Telephone: (202) 377-4008.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** Section 455(b) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1087e(b), provides formulas for determining the interest rates charged to borrowers for loans made under the Direct Loan Program including Federal Direct Stafford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans), and Federal Direct Consolidation Loans (Direct Consolidation Loans).

The Direct Loan Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the Direct Loan Program have variable interest rates that change each year. The variable interest rate formula that applies to a particular loan depends on the date of the first

disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

In the case of some Direct Consolidation Loans, the interest rate is determined by the date on which the Direct Consolidation Loan application was received. Direct Consolidation Loans for which the application was received on or after February 1, 1999 have a fixed interest rate based on the weighted average of the loans that are consolidated, rounded up to the nearest higher  $\frac{1}{8}$  of one percent.

Pursuant to section 455(b) of the HEA, 20 U.S.C. § 1087e(b), the Direct Loan interest rate formulas use the bond equivalent rates of the 91-day Treasury bills at the final auction held before June 1 of each year plus a statutory add-on percentage to determine the variable interest rate for all Direct Subsidized Loans and Direct Unsubsidized Loans; Direct Consolidation Loans for which the application was received on or after July 1, 1998 and before February 1, 1999; and Direct PLUS Loans disbursed on or after July 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 31, 2005, which is used to calculate the interest rates on these loans, is 2.998 percent, which is rounded to 3.00 percent.

In addition, pursuant to section 455(b) of the HEA, 20 U.S.C. 1087e(b), as amended by Public Law 106-554, the Consolidated Appropriations Act 2001, the interest rate for Direct PLUS Loans that were disbursed on or after July 1, 1994 and on or before July 1, 1998, is calculated based on the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus a statutory add-on percentage.

The last calendar week ending on or before June 26, 2005 began on June 19, 2005 and ended on June 25, 2005. On June 27, 2005, the Board of Governors of the Federal Reserve System published the 1-year constant maturity Treasury yield average as 3.40 percent.

Below is specific information on the calculation of the interest rates for the Direct Loan Program. This information is listed in order by the date a loan was first disbursed or by the date that the Consolidation Application was received.

In addition, a summary of the interest rates that are effective for the period July 1, 2005 through June 30, 2006, is included on charts at the end of this notice. These charts are organized by

loan type. In each chart, the interest rates are arranged by the date a loan was first disbursed or by the date that the consolidation application was received.

**For Direct Loan Program Loans First Disbursed on or After July 1, 1994, and Before July 1, 1995—**

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1994, and before July 1, 1995, is 6.1 percent during all periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were first disbursed on or after July 1, 1994 and before July 1, 1995, is 6.50 percent for all periods.

**For Direct Loan Program Loans First Disbursed on or After July 1, 1995, and Before July 1, 1998—**

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.5 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1995, and before July 1, 1998, is 5.50 percent during in-school, grace, and deferment periods and 6.10 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were first disbursed on or after July 1, 1995 and before July 1, 1998, is 6.50 percent during all periods.

**For Direct Loans First Disbursed On or After July 1, 1998, and Before October 1, 1998—**

The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1998 and before October 1, 1998, is 4.70 percent during in-school, grace, and deferment periods and 5.30 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1998, and before October 1, 1998, is 6.10 percent during all periods.

**For Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans First Disbursed On or After October 1, 1998, and Before July 1, 2006—**

The interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the

interest rate formula is the bond equivalent rate of the 91-day Treasury bills plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans that were disbursed after July 1, 1998, and before July 1, 2005, is 4.70 percent during in-school, grace, and deferment periods and 5.30 percent during all other periods.

The interest rate for Direct PLUS Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct PLUS Loans that were disbursed after July 1, 1998, and before July 1, 2006, is 6.10 percent during all periods.

**For Direct Consolidation Loans First Disbursed On or After October 1, 1998 and for Which the Application Was Received Before October 1, 1998—**

The interest rate for Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1998 and before October 1, 1998, is 4.70 percent during in-school, grace, and deferment periods and 5.30 percent during all other periods.

The interest rate for Direct PLUS Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1998, and before October 1, 1998, is 6.10 percent during all periods.

**For Direct Consolidation Loans for Which the Application Was Received on or After October 1, 1998, and Before February 1, 1999—**

The interest rate for Direct Consolidation Loans for which the application was received on or after October 1, 1998 and before February 1, 1999 is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2005, to June 30, 2006, the interest rate for Direct Consolidation Loans for which the application was received on or after October 1, 1998 and before February 1, 1999, is 5.30 percent during all periods.

**For Direct Consolidation Loans for Which the Application Was Received On or After February 1, 1999, and Before July 1, 2006—**

The interest rate for Direct Consolidation Loans for which the application was received on or after February 1, 1999, and before July 1, 2006, is the lesser of 8.25 percent, or the weighted average of the loans consolidated, rounded to the nearest higher 1/8 of one percent. *Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/federegister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

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**Program Authority:** 20 U.S.C. 1087 *et seq.*

Dated: November 3, 2005.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

Status	Treasury instrument	Add-on			Interest rate for 7/1/2004 through 6/30/2005	Maximum interest rate
Federal Direct Subsidized Loans and Federal Direct Unsubsidized Loans						
Loans with first disbursement date between 7/1/1994 and 6/30/1995: Any status.	91-day T-bill 3.00	+	3.1	=	6.10	8.25
Loans with first disbursement date between 7/1/1995 and 6/30/1998:						
Repayment or forbearance .....	91-day T-bill 3.00	+	3.1	=	6.10	8.25
In-school, grace, or deferment .....	91-day T-bill 3.00	+	2.5	=	5.50	8.25
Loans with first disbursement date on or after 7/1/1998:						
Repayment or forbearance .....	91-day T-bill 3.00	+	2.3	=	5.30	8.25
In-school, grace, or deferment .....	91-day T-bill 3.00	+	1.7	=	4.70	8.25
Federal Direct Subsidized Consolidation Loans and Federal Direct Unsubsidized Consolidation Loans						
Loans with first disbursement date between 7/1/1994 and 6/30/1995: Any status.	91-day T-bill 3.00	+	3.1	=	6.10	8.25
Loans with first disbursement date between 7/1/1995 and 6/30/1998:						
Repayment or forbearance .....	91-day T-bill 3.00	+	3.1	=	6.10	8.25
In-school, grace, or deferment .....	91-day T-bill 3.00	+	2.5	=	5.50	8.25
Loans with first disbursement date between 7/1/1998 and 9/30/1998 and loans with first disbursement date on or after 10/1/1998 for which the application was received before 10/1/1998:						
Repayment or forbearance .....	91-day T-bill 3.00	+	2.3	=	5.30	8.25
In-school, grace, or deferment .....	91-day T-bill 3.00	+	1.7	=	4.70	8.25
Loans for which the application was received between 10/01/1998 and 1/31/1999: Any status.	91-day T-bill 3.00	+	2.3	=	5.30	8.25
Loans for the application was received on or after 2/01/1999: Any status.	The lesser of 8.25 percent or the weighted average of the loans application consolidated, rounded to the next higher 1/8 of one percent.					8.25
Federal Direct PLUS Loans						
Loans with first disbursement date before 7/1/1998: Any status	1-year constant maturity Treasury yield 3.40	+	3.1	=	6.50	9.00

Status	Treasury instrument	Add-on	Interest rate for 7/1/2004 through 6/30/2005	Maximum interest rate
Loans with first disbursement date on or after 7/1/1998: Any status.	91-day T-bill 3.00	+ 3.1 =	6.10	9.00
<b>Federal Direct PLUS Consolidation Loans</b>				
Loans with first disbursement date before 7/1/1998: Any status	1-year constant maturity Treasury yield 3.40	+ 3.1 =	6.50	9.00
Loans with first disbursement date between 7/1/1998 and 9/30/1998 and loans with first disbursement date on or after 10/1/1998 for which the application was received before 10/1/1998: Any status.	91-day T-bill 3.00	+ 3.1 =	6.10	9.00
Loans for which the application was received between 10/01/1998 and 1/31/1999: Any status.	91-day T-bill 3.00	+ 2.3 =	5.30	8.25
Loans for which the application was received on or after 2/01/1999: Any status.	The lesser of 8.25 percent or the weighted average of the loans application consolidated, rounded to the next higher was received 1/8 of one percent.			8.25

[FR Doc. 05-22366 Filed 11-8-05; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD06-2-000]

#### Assessment of Demand Response Resources

November 3, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of Proposed Voluntary Survey and Technical Conference.

**SUMMARY:** Pursuant to the Energy Policy Act of 2005 (EPAct 2005) section 1252(e)(3),<sup>1</sup> the Federal Energy Regulatory Commission (Commission) is preparing a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. A voluntary survey and technical conference are proposed to obtain information that will assist in preparing and publishing this report.

**DATES:** (1) Comments on the proposed survey questions should be filed December 5, 2005.

(2) Requests to participate in the technical conference are due December 5, 2005.

(3) Comments on the proposed technical conference topics are due December 19, 2005.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the

Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426. Please refer to the Comment Procedures section of the preamble for additional information on how to file comments.

#### FOR FURTHER INFORMATION CONTACT:

David Kathan (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6404, [David.Kathan@ferc.gov](mailto:David.Kathan@ferc.gov).

Aileen Roder (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6022, [Aileen.Roder@ferc.gov](mailto:Aileen.Roder@ferc.gov).

**SUPPLEMENTARY INFORMATION:** 1. Take notice that a survey on the saturation and penetration of advanced meters is being proposed and that a technical conference, with comments, on issues raised by the Energy Policy Act of 2005 (EPAct 2005) section 1252(e)(3)<sup>2</sup> will be held. Comments on the survey are due by December 5, 2005. The date, location, and agenda of the conference will be announced in a subsequent notice. Those wishing to participate in the technical conference should notify Commission staff by December 5, 2005. Finally, comments on the demand response issues addressed in the statute are due by December 19, 2005. These

comments will help inform the discussion at the technical conference.

#### I. Background

2. Section 1252(e)(3) of EPAct 2005 requires the Commission to draft and publish a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. Specifically, EPAct 2005 requires that the Commission identify and review:

- (A) Saturation and penetration rates of advanced meters and communications technologies, devices and systems;
- (B) Existing demand response programs and time-based rate programs;
- (C) The annual resource contribution of demand resources;
- (D) The potential for demand response as a quantifiable, reliable resource for regional planning purposes;
- (E) Steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and
- (F) Regulatory barriers to improved customer participation in demand response, peak reduction and critical period pricing programs.

3. A survey is proposed to obtain the needed information on meter saturation and penetration. With respect to the other issues the Commission must address in the report, input from state regulators and members of the industry will enhance its ability to present a comprehensive and well informed

<sup>1</sup> Energy Policy Act of 2005, Pub. L. 109-58, § 1252(e)(3), 119 Stat. 594, (2005) (EPAct section 1252(e)(3)).

<sup>2</sup> Energy Policy Act of 2005, Pub. L. 109-58, § 1252(e)(3), 119 Stat. 594, (2005) (EPAct section 1252(e)(3)).

report. To acquire this input, the public is invited to submit comments on the demand response issues addressed by the statute and to participate in a technical conference we will hold to discuss those issues.

#### *A. Voluntary Survey on Saturation and Penetration of Advanced Metering and Demand Response*

4. A voluntary survey is proposed on the use of advanced metering and demand response, because adequate information on this subject is not collected by other sources. For instance, the information collected by EIA-861 (Annual Electric Power Industry Report) form administered by the Energy Information Administration (EIA) includes aggregate information on energy efficiency and load management, but does not include any information on advanced metering. In addition, the information on load management collected by EIA does not provide sufficient information to help identify existing demand response programs or time-based rate programs.

5. The Commission will conduct the survey using the Internet. The proposed survey is targeted towards respondents who directly serve end-use customers. Respondents will provide their information for the survey to the Commission on an Internet web-based form and submit their responses electronically directly to the Commission.

6. Because there are no standard industry definitions, Commission staff is uncertain about the best set of questions for obtaining information on the saturation and penetration of advanced metering. For example, given the various types of meters with advanced functionality, it may be difficult to unambiguously define advanced metering. Instead, we propose a survey that asks a series of questions concerning meter functionality. Information on meter functionality will better assist in developing a definition of advanced metering that can be used to accurately estimate regional saturation and penetration of advanced metering. A national survey of advanced metering should also prove useful for planning and benchmarking by market participants.

7. While the focus of the survey is on advanced metering, the proposed survey also contains several questions requesting information on existing demand response and time-based metering programs. These questions are designed to collect program information necessary to obtain information on demand response programs in response to section 1252(e)(3)(B) of EPAct.

Furthermore, in recognition that different individuals or departments may be responsible for completing the metering and demand response information, the survey will be implemented as two Web-based forms (one on advanced metering, and one on demand response programs)<sup>3</sup> to ease data entry.

8. The proposed survey is attached to this Notice as an Appendix. The public is requested to comment on the survey questions. In particular, the public should comment on whether the questions will elicit accurate information on advanced meters and demand response programs, or whether the questions should be modified or supplemented to better obtain information. In addition, we solicit input on other sources of information on advanced metering and demand response programs. Comments on the survey are to be filed by December 5, 2005 and should reference this proceeding.

#### *B. Comments and Technical Conference*

9. Industry input is also needed in order to gain an objective appraisal of the issues identified in the EPAct 2005, particularly those which require the strategic assessments of businesses, such as the potential for use of demand response as a reliable resource for planning purposes, steps taken to treat demand response equitably in regional transmission planning, and barriers to improved customer participation in demand response programs. Therefore, written comments are requested on the six general topics listed in the EPAct 2005 in accordance with this Notice's Section II, below.

10. In order to provide a forum for discussion of these issues, a technical conference will be held to gather additional data and receive further public comment on the issues we will address in the report. The date of the conference will be announced in a subsequent notice. Those wishing to participate in the conference should contact David Kathan ([David.Kathan@ferc.gov](mailto:David.Kathan@ferc.gov) or (202) 502-6404) by December 5, 2005 and should reference this proceeding.

11. The conference will be open to the public, and pre-registration to attend is not required.

12. FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail

<sup>3</sup> Please note that due to the limitations of the Web-based survey tool, the demand response survey includes multiple questions per customer class to accommodate respondents with more than one demand response program per class.

to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

## **II. Comment Subject Areas**

13. Commenters may address any of the demand response and time-based rate issues raised and/or identified in EPAct 2005 section 1252(e)(3). Commenters are encouraged, but not required, to consider and address the following questions within each of the six EPAct 2005 issues in their response. Comments on these issues are due by December 19, 2005.

#### *A. Advanced Metering and Communication Systems*

- How should the Commission define advanced meters and communication systems for the purpose of reporting to Congress?

- Are advanced meters necessary to implement demand response and time-based rate programs? Can sufficient demand response be fostered from non-communicating, non-hourly meters?

- In general, what are the current saturation and penetration levels of advanced meters?

- Does the implementation of an advanced metering system or use of advanced meters reduce utility costs?

- What level of penetration is needed to achieve cost savings? For example, can advanced meters be used only for certain customer groups or would all customers need to use advanced meters to make their use cost effective?

#### *B. Existing Demand Response and Time-Based Rate Programs*

- Describe the type of programs being used and the benefits or detriments of each programmatic approach.

- How have these types of programs changed since the early 1990s?

- Have demand response and time-based rate programs increased or decreased in recent years?

- Are demand response programs implemented by electric utilities available to all customers, or are they targeted to specific customer groups or geographic areas, e.g., load pockets or transmission constrained areas?

#### *C. Annual Resource Contribution<sup>4</sup> of Demand Response*

- Describe in general the extent of resource contribution by demand response for the geographic area you serve or represent.

<sup>4</sup> For purposes of this notice and proposed survey, resource contribution is defined as potential peak reduction at time of system peak.

- Identify and describe the best available sources of information on the annual resource contribution made by demand response, by region.

- What problems exist in measuring resource contribution? Should the measurement be on the basis of enrollment or on actual quantities used?

*D. Potential for Demand Response as a Quantifiable, Reliable Resource for Regional Planning Purposes*

- What percentage of total resource requirements could demand response resources reliably provide?
- What is the current role of demand response resources in meeting regional resource adequacy requirements and ancillary services?

- Explain the risks of relying on demand response for resource adequacy. Do the risks differ depending on the type of demand response?

- What is the potential impact of demand response on overall energy usage?

- Can time-based rate programs or interruptible/curtailment rate programs be counted as capacity resources in regional plans?

*E. Equitable Treatment of Demand Response Resources in Regional Transmission Planning and Operations*

- What is the status of including demand response within regional transmission planning and operations?

- Have demand response resources been examined during the development of regional transmission plans, and to what extent?

- Do current North American Electric Reliability Council (NERC) standards and regional reliability council rules accommodate the use of demand response as an alternative to building

more transmission infrastructure, building generating capacity, or generating/purchasing more power?

- In regional transmission operations, such as RTOs and ISOs, what demand response resources are currently available? Under what circumstances are these resources called upon and at what level (kW/kWhs)?

*F. Regulatory Barriers to Improved Customer Participation in Demand Response, Peak Reduction, and Critical Period Pricing Programs*

- What wholesale and retail regulatory barriers exist to improving customer participation in demand response?

- What regulatory barriers exist to improving customer participation in innovative time-based rate programs, such as critical peak pricing?

- What are the drivers and disincentives to customer interest in participating in demand response or critical period pricing programs?

- Do start-up costs limit the number of participants in demand response programs? If so, how should this issue be addressed?

- Does jurisdictional uncertainty between state and federal regulation create barriers to demand response programs?

- Are there regulatory or other barriers to participation of third-party curtailment service providers in ISO/RTO demand response programs? Are current settlement and payment procedures adequate for participation by these third-party entities?

- Given that distribution companies may no longer own generation or be a supplier of last resort, has their incentive to provide demand response been reduced? If so, what alternative

mechanisms or policies should be considered to provide incentives to these distribution companies to implement demand response?

- Do current retail rate structures, which are largely based on volumetric rates, create a disincentive for distribution company promotion and implementation of demand response? If they do, how can this disincentive be reduced?

- What are the drivers or disincentives to load-serving entities offering aggressive demand response programs?

### III. Information Collection Statement

14. OMB regulations require that OMB approve certain reporting, recordkeeping, and public disclosure (collections of information) imposed by an agency.<sup>5</sup> Accordingly, pursuant to OMB regulations, notice is given to the public that (1) the voluntary draft survey that is attached as an Appendix to this Notice is proposed to be administered using the Internet and a web-based application to collect the information electronically, and (2) OMB is being asked for review and approval of the final survey under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>6</sup>

15. Comments are requested on the efficacy of the draft survey in the Appendix to this Notice and the accuracy of the estimates made to measure the burden on respondents of completing the survey that are detailed below.

16. This Notice has been submitted to OMB for review and clearance of the Notice's information collection requirements. OMB approval has been requested by December 19, 2005.

Data collection	No. of respondents	No. of responses	Hours per response	Total annual hours
FERC-727, Demand Response and Time Based Rate Programs Survey ....	1,500	1	1	3,000
FERC-728, Advanced Metering Survey .....	1,500	1	1	3,000
Totals .....	3,000	2	2	6,000

17. *Total Annual Hours for Collection:* The reporting burden for this survey is estimated at 6,000 hours.

18. *Information Collection Costs:* The surveyed organizations collect all the information requested in FERC-727 and FERC-728 as part of their customary and usual business practices. Comments are requested on the cost of responding

to FERC-727 and FERC-728. The average annualized cost for all respondents is projected to be \$324,000 (6,000 hours × \$54 per hour).

19. *Title:* FERC-727, *Demand Response and Time Based Rate Programs Survey* and FERC-728, *Advanced Metering Survey*.

20. *Action:* Proposed Information Collection. The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

21. *Respondents:* Business or other for profit, publicly-owned utilities, and electric cooperatives.

<sup>5</sup> 5 CFR 1320.10 (2005).

<sup>6</sup> 44 U.S.C. 3507(d) (2005).

22. *Frequency of Responses*: One-time implementation.

23. *Necessity of Information*: On August 8, 2005, Congress enacted EPA Act 2005. Section 1252(e)(3) of the EPA Act 2005 requires the Commission to draft and publish a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. Commission staff has reviewed public information to determine the availability of saturation and penetration data on advanced metering with the regional specificity required by the EPA Act 2005. The review included an assessment of the EIA-861, which collects aggregate information on energy efficiency and load management. The EIA-861 does not include any information on advanced metering. Moreover, there are no publicly available saturation and penetration data on advanced metering at the level required by the EPA Act 2005. The Commission is dedicated to establishing clear market rules to govern electric markets. The information collected through this survey will assist the Commission in carrying out its goal of developing robust and efficient energy markets.

24. *Internal Review*: Internal review at the Commission shows that there is specific, objective support for the burden estimates associated with the information requirements. The Commission will review the data resulting from the survey to ensure that the survey results meet the congressional requirements of the annual report on demand response in EPA Act 2005. This conforms to the Commission's plan for efficient information collection, communication, and management within the electric industry.

25. Interested persons may obtain information on the reporting requirements of the survey by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202-502-8415, fax: 202-273-0873, e-mail: [Michael.miller@ferc.gov](mailto:Michael.miller@ferc.gov)). To submit comments concerning the collection of information and the associated burden estimates including suggestions for reducing this burden, please send your comments to the contact listed above and to the Office of Management and Budget, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503 (Attention: Desk Officer for the Federal

Energy Regulatory Commission), fax: 202-395-7285, e-mail: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

26. The "public protection" provision of the Paperwork Reduction Act<sup>7</sup> requires each agency to display a currently valid OMB control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection. This provision has two legal effects: (1) It creates a legal responsibility for the agency; and (2) it provides an affirmative legal defense for respondents if the information collection is imposed on respondents by the Commission through regulation or administrative means in order to satisfy a legal authority or responsibility of the Commission. If the Commission should fail to display an OMB control number, then it is the Commission not the respondent who is in violation of the law. "Display" is defined as publishing the OMB control number in regulations, guidelines or other issuances in the **Federal Register** (for example, in the preamble or regulatory text for the final rule containing the information collection).<sup>8</sup> Therefore, the Commission may not conduct or sponsor, and a person is not required to respond to a collection of information unless the information collection displays a valid OMB control number.

#### IV. Comment Procedures

27. Interested persons are invited to submit comments on the matters, issues and specific questions in this Notice. Comments should refer to Docket No. AD06-2-000, and include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

28. To facilitate review of the comments, we request commenters to provide an executive summary of their comments. Commenters also are requested to identify each specific question posed in this notice that their discussion addresses and to use appropriate headings. Commenters should identify additional issues they wish to raise separately.

29. Comments regarding the proposed survey are due December 5, 2005.

30. Comments on the proposed technical conference topics are due December 19, 2005.

31. Those considering participating in the technical conference should contact David Kathan within December 5, 2005.

32. All comments related to this proceeding may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

33. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### V. Document Availability

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

35. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

36. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov)), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-Mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

**Magalie R. Salas,**  
*Secretary.*

**BILLING CODE 6717-01-P**

<sup>7</sup> 44 U.S.C. 3512(2000); 5 CFR 1320.5(b)(2005); 5 CFR 1320.6(a)(2005).

<sup>8</sup> See 1 CFR 21.35(2005); 5 CFR 1320.3(f)(3)(2005).



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APPENDIXAdvanced Metering Program Survey  
FERC Form 728

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[Exit this survey >>](#)**Advanced Metering Program Survey**

The Energy Policy Act of 2005 section 1252(e)(3) requires the Federal Energy Regulatory Commission to prepare a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. This survey will provide the Commission with information needed for the report. Questions concerning this survey should be directed to David Kathan at 202-502-6404.

Notice: An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays OMB control number. (See 44 U.S.C. § 3512 (2000); 5 C.F.R. § 1320.6 (2005)). For information on our Privacy Policy see <http://www.ferc.gov/privacy.asp>.

**\* 1. Select the NERC region for which you are providing the advanced metering information. (check one)**

ECAR	ERCOT	FRCC	MAAC	MAIN	MAPP	NPCC	SERC	SPP	WECC	None
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 2. Identify State Where Primary Business is Transacted (or Service Territory)****\* 3. Respondent Type (check one)**

Federal	State	Political Subdivision	Municipal	Municipal Marketing Authority	Investor- owned	Cooperative	Power Marketer
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 4. What is your company's name?****5. What is the name of your operating company?****\* 6. Corporate Address**

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**\* 7. City**

**\* 8. State**

**\* 9. Zip Code**

**\* 10. Name of Person Who Filled Out This Survey**

**\* 11. Contact Person**

**\* 12. Contact Telephone XXX-XXX-XXXX**

**\* 13. Contact E-Mail Address**

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Advanced Metering Program Survey  
FERC Form 728

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[Exit this survey >>](#)**Advanced Metering Program Survey****2. Commercial/Industrial (C/I) Customer Definitions**

Please indicate how your company separates Commercial/Industrial customers into large and small categories. Answer the applicable question (s). For example, if the minimum size of large C/I is 500 kW, enter 500 in appropriate field in question 16 and leave other questions blank.

**14. What are your typical minimum requirements in terms of voltage for:**Large Commercial/Industrial (C/I) Customers? Small Commercial/Industrial (C/I) Customers? **15. What are your typical minimum requirements in terms of usage (kWh per month) for:**Large Commercial/Industrial (C/I) Customers? Small Commercial/Industrial (C/I) Customers? **16. What are your typical minimum requirements in terms of demand (kW) for:**Large Commercial/Industrial (C/I) Customers? Small Commercial/Industrial (C/I) Customers? **17. What are your typical minimum requirements in terms of some other factor(s) (specify) for:**Large Commercial/Industrial (C/I) Customers? List factor Small Commercial/Industrial (C/I) Customers? List factor [<< Prev](#)[Next >>](#)

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Advanced Metering Program Survey  
FERC Form 728

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[Exit this survey >>](#)**Advanced Metering Program Survey****3. ADVANCED METERING**

Please respond if you directly own or control end use meters.

**18. Total Number of Customers**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**19. Total Number of Meters of all types (advanced and conventional meters)**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**20. Total number of meters that are *capable* of measuring usage according to intervals of an hour or less, but greater than 15 minutes, and read on at least a daily basis. ["Capable" means the meter is either performing this function today or can perform the function without a physical visit to the meter to reprogram it or add an extra device of some kind.]**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**21. Total number of meters that are *used* today to measure usage according to intervals of an hour or less, but greater than 15 minutes, and read on at least a daily basis.**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

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**22. Total number of meters that are *capable* of measuring usage according to intervals of 15 minutes or less and read on at least a daily basis.**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**23. Total number of meters that are *used* today to measure usage according to intervals of 15 minutes or less and read on at least a daily basis.**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**24. Total number of meters that are *capable* of measuring usage in more than one period per day but on a less frequent basis than hourly? (e.g. 3 or four periods per day such as peak, off-peak, etc.)**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**25. How many of the meters listed in question 24 are *capable* of providing only Monthly usage totals per period (e.g. peak, off-peak, etc.)?**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**26. How many of the meters listed in question 24 are *capable* of providing Daily usage totals per period (e.g. peak, off-peak, etc.) for each day in the month ?**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

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The Energy Policy Act of 2005 section 1252(e)(3) requires the Federal Energy Regulatory Commission to prepare a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. This survey will provide the Commission with information needed for the report. Questions concerning this survey should be directed to David Kathan at 202-502-6404.

Notice: An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays OMB control number. (See 44 U.S.C. § 3512 (2000); 5 C.F.R. § 1320.6 (2005)). For information on our Privacy Policy see <http://www.ferc.gov/privacy.asp>.

**\* 1. Select the NERC region for which you are providing the demand response information. (check one)**

ECAR	ERCOT	FRCC	MAAC	MAIN	MAPP	NPCC	SERC	SPP	WECC	None
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 2. Identify State Where Primary Business is Transacted (or Service Territory)****\* 3. Respondent Type (check one)**

Federal	State	Political Subdivision	Municipal	Municipal Marketing Authority	Investor- owned	Cooperative	Power Marketer
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 4. What is your company's name?****5. What is the name of your operating company?**

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**\* 6. Corporate Address****\* 7. City****\* 8. State****\* 9. Zip Code****\* 10. Name of Person Who Filled Out This Survey****\* 11. Contact Person****\* 12. Contact Telephone XXX-XXX-XXXX****\* 13. Contact E-Mail Address****Next Question>>**

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Please indicate how your company separates Commercial/Industrial customers into large and small categories. Answer the applicable question (s). For example, if the minimum size of large C/I is 500 kW, enter 500 in appropriate field in question 16 and leave other questions blank.

**14. What are your typical minimum requirements in terms of voltage for:**Large Commercial/Industrial (C/I) Customers? Small Commercial/Industrial (C/I) Customers? **15. What are your typical minimum requirements in terms of usage (kWh per month) for:**Large Commercial/Industrial (C/I) Customers? Small Commercial/Industrial (C/I) Customers? **16. What are your typical minimum requirements in terms of demand (kW) for:**Large Commercial/Industrial (C/I) Customers? Small Commercial/Industrial (C/I) Customers? **17. What are your typical minimum requirements in terms of some other factor(s) (specify) for:**Large Commercial/Industrial (C/I) Customers? List factor Small Commercial/Industrial (C/I) Customers? List factor [<< Prev Question](#)[Next Question >>](#)



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Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

**19. How many of your customers can view such interval usage information via the Internet?**

Residential	<input type="text"/>
Small C/I	<input type="text"/>
Large C/I	<input type="text"/>
Other (e.g., agricultural)	<input type="text"/>

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[Exit this survey >>](#)**Demand Response and Time Based Rate Programs Survey****4. Demand Response Programs: Residential**

Please list the Demand Response Programs (programs that encourage or direct curtailment or shifting of usage) you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment and potential numbers for each customer class.

**Program Types** include direct load control (DLC), interruptible load (IL), emergency curtailment (EC), and other such programs.

**Potential Peak Reduction** reflects the installed load reduction capability (MW) of program participants during the time of annual system peak load.

**Special Instructions:** If you only have 1 (one) Residential Program please skip to the Small C/I Program etc.

**20. Residential Program 1**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**21. Residential Program 2**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**22. Residential Program 3**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>

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Number Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**23. Residential Program 4**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

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[Exit this survey >>](#)**Demand Response and Time Based Rate Programs Survey****5. Demand Response Programs: *Small C/I***

Please list the Demand Response Programs (programs that encourage or direct curtailment or shifting of usage) you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment and potential numbers for each customer class.

**Program Types** include direct load control (DLC), interruptible load (IL), emergency curtailment (EC), and other such programs.

**Potential Peak Reduction** reflects the installed load reduction capability (MW) of program participants during the time of annual system peak load.

**Special Instructions:** If you only have 1 (one) Small C/I Program please skip to the Large C/I Program etc.

**24. Small C/I Program 1**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**25. Small C/I Program 2**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**26. Small C/I Program 3**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>

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Number of Enrolled Customers   
Potential Peak Reduction (MW)

**27. Small C/I Program 4**

Name of Program   
Program Type (DLC, IL, EC, Other)   
Program Description   
Number of Enrolled Customers   
Potential Peak Reduction (MW)

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[Exit this survey >>](#)**Demand Response and Time Based Rate Programs Survey****6. Demand Response Programs: Large C/I**

Please list the Demand Response Programs (programs that encourage or direct curtailment or shifting of usage) you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment and potential numbers for each customer class.

**Program Types** include direct load control (DLC), interruptible load (IL), emergency curtailment (EC), and other such programs.

**Potential Peak Reduction** reflects the installed load reduction capability (MW) of program participants during the time of annual system peak load.

**Special Instructions:** If you only have 1 (one) Large C/I Program please skip to the Other (e.g., agricultural) question.

**28. Large C/I Program 1**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**29. Large C/I Program 2**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**30. Large C/I Program 3**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>

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Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**31. Large C/I Program 4**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

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[Exit this survey >>](#)**Demand Response and Time Based Rate Programs Survey****7. Demand Response Programs: Other (e.g., agricultural)**

Please list the Demand Response Programs (programs that encourage or direct curtailment or shifting of usage) you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment and potential numbers for each customer class.

*Program Types* include direct load control (DLC), interruptible load (IL), emergency curtailment (EC), and other such programs.

*Potential Peak Reduction* reflects the installed load reduction capability (MW) of program participants during the time of annual system peak load.

**Special Instructions:** fill this section out, only if you Other Programs (e.g., agricultural). Otherwise go on to the next question.

**32. Other Program 1**

Name of Program	
Program Type (DLC, IL, EC, Other)	
Program Description	
Number of Enrolled Customers	
Potential Peak Reduction (MW)	

**33. Other Program 2**

Name of Program	
Program Type (DLC, IL, EC, Other)	
Program Description	
Number of Enrolled Customers	
Potential Peak Reduction (MW)	

**34. Other Program 3**

Name of Program	
Program Type (DLC, IL, EC, Other)	
Program Description	



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Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

**35. Other Program 4**

Name of Program	<input type="text"/>
Program Type (DLC, IL, EC, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>
Potential Peak Reduction (MW)	<input type="text"/>

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[Exit this survey >>](#)**Demand Response and Time Based Rate Programs Survey****8. Time-Based Rate Programs: Residential**

Please list the Time-Based Rate Programs you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment numbers for each customer class.

*Program Types* include time-of-use (TOU), real-time pricing (RTP), critical peak pricing (CPP), and other such programs.

**Special Instructions:** If you only have 1 (one) Residential Program please skip to the Small C/I Program etc.

**36. Residential Program 1**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**37. Residential Program 2**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**38. Residential Program 3**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**39. Residential Program 4**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	

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Number of Enrolled Customers

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[Exit this survey >>](#)**Demand Response and Time Based Rate Programs Survey****9. Time-Based Rate Programs: Small C/I**

Please list the Time-Based Rate Programs you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment numbers for each customer class.

*Program Types* include time-of-use (TOU), real-time pricing (RTP), critical peak pricing (CPP), and other such programs.

**Special Instructions:** If you only have 1 (one) Small C/I Program please skip to the Large C/I Program etc.

**40. Small C/I Program 1**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**41. Small C/I Program 2**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**42. Small C/I Program 3**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**43. Small C/I Program 4**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	

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Number of Enrolled Customers [<< Prev Question](#)[Next Question >>](#)

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Please list the Time-Based Rate Programs you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment numbers for each customer class.

**Program Types** include time-of-use (TOU), real-time pricing (RTP), critical peak pricing (CPP), and other such programs.

**Special Instructions:** If you only have 1 (one) Large C/I Program please skip to the Other (e.g., agricultural) question.

**44. Large C/I Program 1**

Name of Program/Tariff	<input type="text"/>
Program Type (TOU, RTP, CPP, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>

**45. Large C/I Program 2**

Name of Program/Tariff	<input type="text"/>
Program Type (TOU, RTP, CPP, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>

**46. Large C/I Program 3**

Name of Program/Tariff	<input type="text"/>
Program Type (TOU, RTP, CPP, Other)	<input type="text"/>
Program Description	<input type="text"/>
Number of Enrolled Customers	<input type="text"/>

**47. Large C/I Program 4**

Name of Program/Tariff	<input type="text"/>
Program Type (TOU, RTP, CPP, Other)	<input type="text"/>
Program Description	<input type="text"/>

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Number of Enrolled Customers

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[Exit this survey >>](#)**Demand Response and Time Based Rate Programs Survey****11. Time-Based Rate Programs: Other (e.g., agricultural)**

Please list the Time-Based Rate Programs you currently offer. Please provide program data as of the end of 2005, and provide separate enrollment numbers for each customer class.

*Program Types* include time-of-use (TOU), real-time pricing (RTP), critical peak pricing (CPP), and other such programs.

**Special Instructions:** fill this section out, only if you Other Programs (e.g., agricultural).

**48. Other Program 1**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**49. Other Program 2**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**50. Other Program 3**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	
Number of Enrolled Customers	

**51. Other Program 4**

Name of Program/Tariff	
Program Type (TOU, RTP, CPP, Other)	
Program Description	



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Number of Enrolled Customers

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[FR Doc. 05-22295 Filed 11-8-05; 8:45 am]

BILLING CODE 6717-01-C

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2005-0294; FRL-7745-1]

**The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group; Notice of Public Meeting****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on December 5, 2005 and ending December 6, 2005. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on Monday, December 5, 2005 through Tuesday, December 6, 2005 from 8:30 a.m. to 5 p.m. on Monday, December 5 and 8:30 a.m. to 12 p.m. on Tuesday, December 6, 2005.

**ADDRESSES:** The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Crystal City, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0195; fax number: (703) 308-1850; e-mail address: [mcduffie.georgia@epa.gov](mailto:mcduffie.georgia@epa.gov) or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843-1249; telephone number: (802) 472-6956; fax (802) 472-6957; e-mail address: [aapco@plainfield.bypass.com](mailto:aapco@plainfield.bypass.com).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are interested in SFIREG information exchange with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2005-0294. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

**II. Tentative Agenda**

The tentative agenda of issues to be discussed at the meeting includes:

1. Update on uses on mosquito misters.
2. Process for registering bio-decon products.
3. Antimicrobial Division/CDC strategy on foot spas.
4. Chlorpyrifos: Close out strategy.
5. Performance measures: Steering Committee assessment.
6. Endangered Species Program update.
7. Emergency disaster: Registrations.
8. Multinational pesticide registrations.
9. Update on X596 Recycling Standard.

10. Update on container management rulemaking.

11. EPA/SFIREG Coordination of issues with Annual Work Plan.

12. Update on data issues related to OPPIN.

13. OPP and OECA update.

14. Human Study Rule.

**List of Subjects**

Environmental protection. Pesticides and pest.

Dated: November 1, 2005.

**William R. Diamond,**

*Director, Field and External Affairs Division, Office of Pesticide Program.*

[FR Doc. 05-22383 Filed 11-8-05; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2005-0253; FRL-7740-2]

**Propylene Oxide Risk Assessment, Notice of Availability, and Risk Reduction Options****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's human health risk assessment and related documents for the insecticidal fumigant pesticide propylene oxide (PPO), and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED), for PPO through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice opens phase 3 of the 4-phase process.

**DATES:** Comments must be received on or before January 9, 2006.

**ADDRESSES:** Comments, identified by docket identification (ID) number OPP-2005-0253, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Susan Bartow, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-

0065; fax number: (703) 308-8041; e-mail address: [bartow.susan@epa.gov](mailto:bartow.susan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0253. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets.

Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

###### C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are

submitted within the specified comment period. Comments received after the close of the comment period will be marked "late" EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2005-0253. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2005-0253. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and

made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2005-0253.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2005-0253. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

#### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

#### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## **II. Background**

### *A. What Action is the Agency Taking?*

EPA is releasing for public comment its human health risk assessment and related documents for PPO, and soliciting public comment on risk management ideas or proposals. PPO is an insecticidal fumigant used on several food items such as processed spices, cocoa (beans and powder), and in-shell and processed nutmeats (except peanuts). PPO also has nonfood uses for bird seeds, cosmetic articles, gums, ores, packaging, pigments, pharmaceutical materials, and discarded nut shells prior to disposal. EPA developed the risk assessment and risk characterization for PPO through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for PPO. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, or could address the Agency's risk assessment methodologies and

assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for PPO. Risks of concern associated with the use of PPO include cancer dietary risk estimates that are above the Agency's level of concern. The DEEM and Lifeline model cancer dietary excess lifetime risk estimates for the U.S. general population were  $1.3 \times 10^{-5}$  and  $1.5 \times 10^{-5}$ , respectively. For occupational risks, the short-, intermediate-, and long-term inhalation non-cancer and cancer risks from the use of PPO in commodity sterilization/fumigation are of concern at the Agency's current labeled exposure concentration of 20 parts per million (ppm). A summary of these potential risks of concern as well as specific questions for which the Agency is requesting public input, are provided in a separate document titled *Request for Additional Information and Risk Management Suggestions for the Reregistration of Propylene Oxide*. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to PPO, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL-7357-9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For PPO, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its limited use and small number of users. However, if as a result of comments

received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for PPO. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

#### *B. What is the Agency's Authority for Taking this Action?*

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

#### **List of Subjects**

Environmental protection, Pesticides and pests.

Dated: September 30, 2005.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 05-22381 Filed 11-8-05; 8:45 am]

BILLING CODE 6560-50-S

## **ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2004-0346; FRL-7739-4]

### **Ethofumesate Reregistration Eligibility Decision; Notice of Availability**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide ethofumesate, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the

ethofumesate docket. Ethofumesate is a selective herbicide used during preplant, preemergence and postemergence for control of broadleaf and grass weeds. Primary uses are for sugar beets, turf for sod and golf courses, and grass for seed. Special local need uses include uses on spinach and Swiss chard crops which are grown for seed. EPA has reviewed ethofumesate through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before January 9, 2006.

**ADDRESSES:** Comments identified by docket identification (ID) number OPP-2004-0348, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Nathan Mottl, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0208; fax number: (703) 308-8041; e-mail address: [mottl.nathan@epa.gov](mailto:mottl.nathan@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

##### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2004-0346. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the

official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment

contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0346. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2004-0346. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0346.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2004-0346. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket

or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## **II. Background**

### *A. What Action is the Agency Taking?*

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED)

for the pesticide, ethofumesate under section 4(g)(2)(A) of FIFRA. EPA has determined that the data base to support reregistration is substantially complete and that products containing ethofumesate are eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product-specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing ethofumesate.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the ethofumesate tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL-7357-9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, ethofumesate was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ethofumesate.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the ethofumesate RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must

be received by EPA on or before the closing date. These comments will become part of the Agency Docket for ethofumesate. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the ethofumesate RED will be implemented as it is now presented.

#### *B. What is the Agency's Authority for Taking this Action?*

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

#### **List of Subjects**

Environmental protection, Pesticides and pests.

Dated: October 13, 2005.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 05-22107 Filed 11-8-05; 8:45 am]

**BILLING CODE 6560-50-S**

#### **ENVIRONMENTAL PROTECTION AGENCY**

**[OPP-2005-0173; FRL-7744-6]**

#### **Phenothrin; Amendment to Terminate Use**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the amendment to terminate use, voluntarily requested by the

registrant and accepted by the Agency, of a product containing the pesticide phenothrin, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This order follows a July 20, 2005 (corrected August 3, 2005) **Federal Register** Notice of Receipt of a Request from the registrant Hartz Mountain Corporation to voluntarily amend to terminate certain uses of their product Hartz Ref 119. The use of this product as a spot-on for cats and kittens will be terminated. In the July 20, 2005 Notice, EPA indicated that it would issue an order implementing the amendment to terminate use no earlier than October 31, 2005. EPA further indicated that the request for termination of use was irrevocable. The Agency did not receive any comments on the Notice.

Accordingly, EPA hereby issues in this Notice an order granting the requested amendment to terminate use. Any distribution, sale, or use of the product Hartz Ref 119 is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The order to terminate use is effective November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6502; fax number: (703) 305-9596; e-mail address: [sibold.ann@epa.gov](mailto:sibold.ann@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number

OPP-2005-0173. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select “search,” then key in the appropriate docket ID number.

## II. What Action is the Agency Taking?

This notice announces the amendment to terminate use, as requested by the registrant, of Hartz Ref 119, an end-use product containing phenothrin as a spot-on to control fleas and ticks on cats and kittens, registered under section 3 of FIFRA. This registration is listed in Table 1 of this unit.

TABLE 1.—PRODUCT REGISTRATION AMENDMENT TO TERMINATE USE

EPA Registration No.	Product Name
2596-151	Hartz Ref 119

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit.

TABLE 2.—REGISTRANT OF AMENDED PRODUCT

EPA Company No.	Company Name and Address
2596	The Hartz Mountain Corporation, 400 Plaza Drive Secaucus, NJ 07094-3688

## III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the July 20, 2005 **Federal Register** Notice<sup>1</sup> (70 FR 41717) (FRL-7724-1) announcing the Agency’s receipt of the request for an amendment to terminate the affected use of Hartz Ref 119.

## IV. Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendment to terminate the affected use of the Hartz Ref 119 registration identified in Table 1 of Unit II. Accordingly, the Agency orders that the product registration identified in Table 1 of Unit II. is hereby amended to terminate the affected use effective November 9, 2005. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

## V. What is the Agency’s Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the

<sup>1</sup>A sentence was inadvertently omitted from the **DATES** unit which provided a 30-day public comment period. It also inadvertently omitted an **ADDRESSES** unit for the submission of comments. A correction Notice published in the **Federal Register** of August 3, 2005 (70 FR 44636) (FRL-7728-8).

effective date of the order to terminate use. The order issued in this Notice includes the following existing stocks provisions.

Products in the United States that have been packaged, labeled, and released for shipment prior to the effective date of the order terminating use on cats and kittens may be sold or distributed by Hartz from its facilities until December 31, 2005. After December 31, 2005, Hartz may not sell or distribute product labeled for use on cats and kittens. Products labeled for use on cats and kittens may be sold or distributed by persons other than the registrant until March 31, 2006. After this date, products so labeled may not be sold or distributed unless for the purposes of proper disposal or export.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 28, 2005.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 05-22256 Filed 11-8-05; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2005-0056; FRL-7745-4]

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 26, 2005 to October 14, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.



**DATES:** Comments identified by the docket ID number OPPT-2005-0056 and the specific PMN number or TME number, must be received on or before December 9, 2005.

**ADDRESSES:** Comments identified by the docket ID number OPPT-2005-0056 and the specific PMN number or TME number, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2005-0056. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744, and the telephone number for the OPPT Docket,

which is located in the EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving

comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT-2005-0056. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov), Attention: Docket ID Number OPPT-2005-0056 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT-2005-0056 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

#### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## **II. Why is EPA Taking this Action?**

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 26, 2005 to October 14, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## **III. Receipt and Status Report for PMNs**

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

### **I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/26/05 TO 10/14/05**

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-05-0822	09/27/05	12/25/05	CBI	(G) Paint additive	(G) Hydrocarbon resin
P-05-0823	09/27/05	12/25/05	CBI	(G) Paint additive	(G) Hydrocarbon resin
P-05-0824	09/27/05	12/25/05	CBI	(G) Paint additive	(G) Hydrocarbon resin
P-05-0825	09/27/05	12/25/05	CBI	(G) Paint additive	(G) Hydrocarbon resin
P-05-0826	09/27/05	12/25/05	CBI	(G) Paint additive	(G) Hydrocarbon resin

## I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/26/05 TO 10/14/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-05-0827	09/27/05	12/25/05	CBI	(G) Paint additive	(G) Hydrocarbon resin
P-05-0828	09/26/05	12/24/05	Nagase America Corporation	(S) Lubricant for extrusion molding	(G) Hydrogenated fatty acid magnesium salts
P-05-0829	09/27/05	12/25/05	Sun Chemical Corporation	(S) Flush pigment for printing ink	(S) 1-naphthalenesulfonic acid, 2-[[2-hydroxy-3-[(phenylamino)carbonyl]-1-naphthalenyl]azo]-, calcium salt (2:1)
P-05-0830	09/27/05	12/25/05	Sun Chemical Corporation	(S) Flush pigment for printing ink	(S) Benzenesulfonic acid, 2-[[2-hydroxy-3-[(phenylamino)carbonyl]-1-naphthalenyl]azo]-5-methyl-, calcium salt (2:1)
P-05-0831	09/27/05	12/25/05	Sun Chemical Corporation	(S) Flush pigment for printing ink	(S) Benzenesulfonic acid, 2-chloro-5-[[2-hydroxy-3-[(phenylamino)carbonyl]-1-naphthalenyl]azo]-, calcium salt (2:1)
P-05-0832	09/26/05	12/24/05	PPG Aerospace, Prc-desoto International	(S) Polymer for adhesives and sealants; intermediate for production of blend polymer	(G) Mercaptan terminated polyether polymer
P-05-0833	09/28/05	12/26/05	CBI	(G) Open non-dispersive (coatings)	(G) Polyurethane resin
P-05-0834	09/26/05	12/24/05	CBI	(S) Polyurethane sizing for fiberglass	(G) Aqueous polyurethane dispersion
P-05-0835	09/28/05	12/26/05	CBI	(G) Additive for paper manufacturing	(G) Vinyl homopolymer, salt
P-05-0836	09/28/05	12/26/05	CBI	(S) Component of inks	(G) Alkyd resin
P-05-0837	09/29/05	12/27/05	CBI	(G) Lubricant additive	(G) Fats and glyceridic oils mixed with alkenyl ester, sulfurized
P-05-0838	09/30/05	12/28/05	CBI	(G) Textile treatment additive	(G) Fluoroalkylacrylate copolymer
P-05-0839	09/30/05	12/28/05	CIBA Specialty Chemicals Corporation	(S) An oil, water stain, and soil repellent for textile fabrics	(G) Methyl-ethyl-ketoxime blocked polyisocyanate
P-05-0840	09/29/05	12/27/05	DIC International (USA) LLC	(G) Polyurethane for coatings	(G) Polycarbonate polyurethane
P-05-0841	09/29/05	12/27/05	DIC International (USA) LLC	(G) Polyurethane for coatings	(G) Polycarbonate polyurethane
P-05-0842	09/29/05	12/27/05	DIC International (USA) LLC	(G) Polyurethane for coatings	(G) Polycarbonate polyurethane
P-05-0843	09/29/05	12/27/05	DIC International (USA) LLC	(G) Polyurethane for coatings	(G) Polycarbonate polyurethane
P-06-0001	10/03/05	12/31/05	Parish Chemical Company, Inc.	(S) Chemical intermediate	(S) 3h-1,2,4-triazol-3-one, 1,2-dihydro-
P-06-0002	10/03/05	12/31/05	CBI	(S) Crosslinker for polymers	(G) Polyether polycarbodiimide
P-06-0003	10/03/05	12/31/05	CBI	(G) Multi-purpose processing aid	(G) Alkoxyated benzenedicarboxylic acid derivative
P-06-0004	10/04/05	01/01/06	CBI	(G) Step 2 yellow pigment intermediate	(G) Butanamide, 2-[(2-methoxy-4-nitrophenyl)azo]-N-(2-methoxyphenyl)-3-oxo-, 4-[(17-substituted-3,6,9,12,15-pentaazaheptadec-1-yl)substituted]phenyl derivatives.
P-06-0005	10/03/05	12/31/05	3M	(G) Textile treatment additive.	(G) Aromatic urethane
P-06-0006	10/04/05	01/01/06	Danisco USA Inc.	(S) Bulk fragrant aroma ingredient for use in fragrance mixtures for use in perfumes, soaps, cleansers, etc.	(S) Oils, apple
P-06-0007	10/04/05	01/01/06	CBI	(G) Step 2 magenta pigment intermediate	(G) Quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-2,9-dimethyl-, 4-[(17-substituted-3,6,9,12,15-pentaazaheptadec-1-yl)substituted]phenyl derivatives
P-06-0008	10/04/05	01/01/06	CBI	(G) Step 2 black pigment intermediate	(G) Carbon black, 4-[(17-substituted-3,6,9,12,15-pentaazaheptadec-1-yl)substituted]phenyl-modified
P-06-0009	10/05/05	01/02/06	CBI	(G) Textile additive	(G) Amino alkoxy polydimethylsiloxane, hydroxy terminated
P-06-0010	10/05/05	01/02/06	CBI	(G) Open, non-dispersive (coatings)	(G) Isocyanate functional polyester polyether urethane polymer
P-06-0011	10/05/05	01/02/06	Forbo Adhesives, LLC	(G) Holt melt polyurethane adhesive	(G) Polyurethane derivative
P-06-0012	10/05/05	01/02/06	CBI	(G) Pigment dispersant	

## I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/26/05 TO 10/14/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-06-0013	10/06/05	01/03/06	CIBA Specialty Chemicals Corporation	(S) Photoresist for electronics industry	(G) Ethanone, 1-[9-ethyl-6-(2-methylbenzoyl)-heteropolycyclic]-, 1-(o-acetyloxime)
P-06-0014	10/06/05	01/03/06	CBI	(G) Chelating agent in detergents	(G) Aminocarboxylic acid chelating agent
P-06-0015	10/06/05	01/03/06	CBI	(G) Colourant	(G) Sulphonated azo dye
P-06-0016	10/11/05	01/08/06	CBI	(G) Contained use (intermediate used in closed process)	(G) 3,5-Dichloro-2-pentanone
P-06-0017	10/12/05	01/09/06	Hi-tech Color Inc.	(G) Heat-resistant and slide of thermal - transfer sheet (back coating agent)	(G) Silicone-polyol
P-06-0018	10/12/05	01/09/06	Hi-tech Color Inc.	(G) Heat-resistant and slide of thermal - transfer sheet (back coating agent)	(G) Silicone-polyol
P-06-0019	10/12/05	01/09/06	Dover Chemical Corporation	(S) Component in a mixture; mixture is used as a curing agent in rubber chemistry	(G) P-Cumylphenol disulfide
P-06-0020	10/12/05	01/09/06	CBI	(G) Reactant	(G) Oxazolidinone
P-06-0021	10/13/05	01/10/06	CBI	(G) Plastic additive	(G) Substituted metallized organic dye
P-06-0022	10/13/05	01/10/06	CBI	(G) Seals and gaskets - manufactured with fluoroe lastomed	(G) Fluoroelastomer
P-06-0023	10/13/05	01/10/06	CBI	(S) Aliphatic urethane acrylate oligomer used in ultra violet curable inks and coatings	(G) Aliphatic urethane acrylate oligomer
P-06-0024	10/13/05	01/10/06	CBI	(S) Aliphatic urethane acrylate oligomer used in the manufacture of ultra violet curable inks and coatings	(G) Aliphatic urethane acrylate oligomer
P-06-0025	10/13/05	01/10/06	CBI	(S) Amine modified monomer acrylate used in ultra violet curable inks and coatings.	(G) Amine modified monomer acrylate
P-06-0026	10/13/05	01/10/06	CBI	(S) Aromatic urethane acrylate oligomer used in ultra violet curable inks and coatings	(G) Aromatic urethane acrylate oligomer
P-06-0027	10/13/05	01/10/06	CBI	(S) Polyester acrylate oligomer used in the manufacture of ultra violet curable inks and coatings.	(G) Polyester acrylate oligomer
P-06-0028	10/13/05	01/10/06	CBI	(S) Polyester acrylate oligomer used in the manufacture of ultra violet curable inks and coatings.	(G) Polyester acrylate oligomer
P-06-0029	10/13/05	01/10/06	CBI	(S) Amine modified monomer acrylate used in ultra violet curable inks and coatings.	(G) Amine modified monomer acrylate
P-06-0030	10/13/05	01/10/06	CBI	(G) Coating component	(G) Polymer of acrylate and methacrylate esters, azo-initiated

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the Notices of Commencement to manufacture received:

## II. 26 NOTICES OF COMMENCEMENT FROM: 09/26/05 TO 10/14/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P-00-1034	09/29/05	09/08/05	(G) Polymethacrylate with alkoxysilane(s) group(s)
P-02-1055	10/06/05	02/13/03	(G) Acrylonitrile, butadiene rubber-extended epoxy resin polymer
P-03-0596	10/04/05	09/13/05	(G) Aromatic acid salt
P-04-0043	09/26/05	09/13/05	(G) Epoxy amine adduct
P-04-0591	10/03/05	09/17/05	(G) Alkyl substituted amino-benzamide
P-04-0952	10/07/05	09/19/05	(G) Polydimethylsiloxane with aminoalkyl and polyether groups
P-04-0955	10/07/05	09/19/05	(G) Polydimethylsiloxane with aminoalkyl and polyether groups
P-05-0188	10/06/05	07/16/05	(G) Fluoroethylene-vinyl copolymer
P-05-0275	09/28/05	06/27/05	(G) Di(alkyl phenyl) iodonium hexafluoroantimonate

## II. 26 NOTICES OF COMMENCEMENT FROM: 09/26/05 TO 10/14/05—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-05-0303	10/06/05	09/23/05	(G) Alkanoic acid, 3-hydroxy-2-(hydroxyalkyl)-2-alkyl-, ion(1-), salts with bisphenol a-bisphenol a-epichlorohydrin polymer 2-alkyl-1-alkanol-1-[(2-hydroxyalkyl)thio]-2-alkanol-tdi reaction products
P-05-0359	10/06/05	09/23/05	(G) Isocyanate acid, polyalkylenepolyphenylene ester, 2-(2-alkoxy)alkanol-and alkylene glycol-blocked
P-05-0365	10/12/05	09/26/05	(G) Substituted aliphatic amine
P-05-0411	10/06/05	09/23/05	(G) Phenol, 4,4'-(1-alkylalkylidene)bis-, reaction products with bisphenol a-epichlorohydrin polymer alkanoate, dialkylenetriamine, 2-(alkylamino)alkanol, 1,1'-alkylenebis[4-isocyanatobenzene] and polyalkylene glycol ether with bisphenol a (2:1)
P-05-0438	10/05/05	09/09/05	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and hexahydro-1,3-isobenzofurandione, 3,5,5-trimethylhexanoate
P-05-0479	10/06/05	09/23/05	(G) Alkanoic acid, 2-hydroxy-, ion(1-), salt with bisphenol a-bisphenola-epichlorohydrin polymer alkanoate-2-(dialkylamino)alkanol-2-alkyl-1-alkanol-tdi reaction products
P-05-0507	10/06/05	09/23/05	(G) 2-alkenoic, 2-alky-, polymer with alkyl 2-alkyl-2-alkenoate, alkenylbenzene, 2-hydroxyalkyl 2-alkyl-2-alkenoate and ..alpha.-(alkyl-1-oxo-2-alkenyl)-.omega.-(phosphonoxy)poly[oxy(alkyl-1,2-alkanediyl)], tert-alkyl 2-alkaneperoxoate-initiated
P-05-0519	09/30/05	09/01/05	(G) Aliphatic polyurethane dispersion
P-05-0530	09/26/05	09/19/05	(G) Polyolefin ester
P-05-0531	09/26/05	09/19/05	(G) Polyolefin ester
P-05-0533	09/28/05	09/09/05	(G) Phenol, 2,6-dialkyl-, homopolymer, alkenylarene alkyl ether
P-05-0569	09/29/05	09/07/05	(G) Polyurethane prepolymer
P-05-0574	09/26/05	08/29/05	(G) Polyurethane polymer
P-05-0580	09/27/05	09/21/05	(G) Acrylic acid polymer with vinylated benzenes and substituted propanediol trimethacrylate
P-05-0581	09/27/05	09/01/05	(G) 2-propenoic acid, polymer with substituted propanediol triacrylated
P-05-0586	09/30/05	09/18/05	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, homopolymer, ester with [3-[(carboxyamino)methyl]-3,5,5-trimethylcyclohexyl]carbamic acid mono[2-(2-butoxyethoxy)ethyl]ester, [3-[(carboxyamino)methyl]-3,5,5-trimethylcyclohexyl]carbamic acid mono[2-(dimethylamino)ethyl] ester and alkyl polyester homopolymer hydrogen(methyl-1,3-phenylene)bis[carbamate]
P-05-0592	09/27/05	09/21/05	(G) Benzyl acrylate polymer with substituted propanediol triacrylate

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 3, 2005.

**Darryl S. Ballard,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 05-22384 Filed 11-8-05; 8:45 am]

**BILLING CODE 6560-50-S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 27, 2005.

**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, Public Law 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 January 9, 2006. 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:** You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov). To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at 202-418-0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0835.

*Title:* Ship Inspections.

*Form Nos.:* FCC Forms 806, 824, 827, and 829.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not—for-profit institutions.

*Number of Respondents:* 1,210.

*Estimated Time Per Response:* 5 minutes for completion of certificate; 4 hours for inspection, and 15 minutes for recordkeeping.

*Frequency of Response:* Annual and every 5 year reporting requirements, and third party disclosure requirement, and recordkeeping requirement.

*Total Annual Burden:* 5,245 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The Communications Act requires the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act. Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years. The Safety Convention (which the United States is signatory) also requires an annual inspection. However, the Safety Convention permits an Administrator to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the United States can have other parties conduct the radio inspection of vessels for compliance with the Safety Convention. The Commission allows FCC-licensed technicians to conduct these inspections. FCC-licensed technicians certify that the ship passed an inspection and issue a safety certificate. These safety certificates (FCC Forms 806, 824, 827 and 829) indicate that the vessel complies with the Communications Act and the Safety Convention. These technicians are required to provide a summary of the results of the inspection in the ship's log. In addition, the vessel's owner, operator, or ship's master must certify in the ship's log that the inspection was satisfactory. Inspection certificates issued in accordance with the Safety Convention must be posted in a prominent and accessible place on the ship. The purpose of the information is to ensure that the inspection was successful so that passengers and crewmembers of certain United States ships have access to distress communications in an emergency.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05-22050 Filed 11-8-05; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 31, 2005.

**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, Public Law 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 (PRA) 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 December 9, 2005. If you anticipate that you will be submitting PRA 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 Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov). If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pra>.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-1085.

*Title:* Collection of Location Information, Provision of Notice and Reporting on Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions and state, local or tribal government.

*Number of Respondents:* 100 respondents; 14,238,254 responses.

*Estimated Time Per Response:* .09-16 hours.

*Frequency of Response:* On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

*Total Annual Burden:* 435,894 hours.

*Total Annual Cost:* \$43,161.

*Privacy Act Impact Assessment:* Yes.

*Needs and Uses:* On June 14, 2005 the Commission submitted this information collection to the OMB under the emergency processing procedures. OMB approval was received on June 28, 2005. Under the emergency processing procedures, the OMB approval is only granted for six months, therefore, the Commission is now submitting this information collection as an extension (no change in requirements) in order to obtain the full three-year clearance from the OMB.

The information collection requirements that are subject to OMB approval are the following:

*A. Location Registration.* Requires providers to interconnected VoIP services to obtain location information from their customers for use in the routing of 911 calls and the provision of location information to emergency answering points.

*B. Provision of Automatic Location Information (ALI).* Interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a state government) across the country.

*C. Customer Notification.* Requires that all providers of interconnected VoIP are aware of their interconnected VoIP service's actual E911 capabilities. That all providers of interconnected VoIP service specifically advises every subscriber, both new and existing, prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

*D. Record of Customer Notification.* Requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

*E. User Notification.* In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on and/or near the customer premises equipment used in conjunction with the interconnected VoIP service.

*F. Compliance Letter.* Requires all interconnected VoIP providers to submit a letter to the Commission detailing their compliance with the rules set forth in the Order no later than 120 days after the effective date of the Order. This letter will enable the Commission to ensure that interconnected VoIP providers have achieved E911 compliance by the established deadline.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 05-22226 Filed 11-8-05; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 4, 2005.

**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, Public Law 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 January 9, 2006. 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:** You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov). To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at 202-418-0214.

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-XXXX.

*Title:* Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems.

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Number of Respondents:* 200.

*Estimated Time Per Response:* 17.5 hours.

*Frequency of Response:* On occasion reporting requirement, and third party disclosure requirement, and recordkeeping requirement.

*Total Annual Burden:* 3,500 hours.

*Total Annual Cost:* \$350,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The Commission is requiring Broadband Radio Service (BRS) licensees in the 2150-2160/62 MHz band to provide information on the construction status and operational parameters of each incumbent BRS system that would be subject of relocation. See ET Docket No. 00-258, Order, 70 FR 61747 (October 26, 2005). This information will assist the Commission in determining the scope of

the new Advanced Wireless Services (AWS) entrants' relocation obligations; also, reliable public data on each incumbent BRS system that would be subject to the relocation is essential well in advance of the planned auction of the 2150-2155 MHz band next year.

The Commission will, after the 60 day comment period, submit this new information collection request to OMB in order to obtain the full three-year clearance from the OMB.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 05-22477 Filed 11-8-05; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 2, 2005.

**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 of 1995, Public Law 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 (PRA) 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:** Persons wishing to comment on this information collection should submit comments January 9, 2006. 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:** You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov). To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at 202-418-0214.

**SUPPLEMENTARY INFORMATION:** OMB Control No.: 3060-0347.

*Title:* Section 97.311, Spread Spectrum (SS) Emission Types.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households.

*Number of Respondents:* 10.

*Estimated Time Per Response:* .017 hours (1 minute).

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 1 hour.

*Annual Cost Burden:* N/A.

*Privacy Act Impact Assessment:* Yes.

*Needs and Uses:* The recordkeeping requirement in Section 97.311 is necessary to document all spread spectrum (ss) transmissions by amateur radio operators. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended. The information is used by FCC staff during inspections and investigations to ensure compliance with applicable rules, statutes, and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to the solution of cases of harmful interference would be severely hampered and needlessly prolonged due to the inability to quickly obtain vital information used to demodulate spread spectrum transmissions.

*OMB Control No.:* 3060-0435.

*Title:* Section 80.361, Frequencies for Narrow-Band Direct-Printing (NB-DP) and Data Transmissions.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; business or other for profit.

*Number of Respondents:* 2.

*Estimated Time Per Response:* 2 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 4 hours.

*Annual Cost Burden:* N/A.

*Privacy Act Impact Assessment:* Yes.

*Needs and Uses:* Section 80.361 requires public coast station applicants to submit a "showing of need" to obtain new or additional narrow-band direct-printing (NB-DP) frequencies. Applicants for new or additional NB-DP frequencies must also show the service schedule for each currently licensed or proposed series of NB-DP frequencies. The need for additional frequencies is based on showing a minimum 40% usage of existing NB-DP frequencies. The FCC uses this information to determine whether to grant a public coast station's application for a NB-DP frequency and if these frequencies are being hoarded or under utilized.

*OMB Control No.:* 3060-0740.

*Title:* Section 95.1015, Disclosure Policies.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 203.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 203 hours.

*Annual Cost Burden:* \$10,000.

*Privacy Act Impact Assessment:* No.

*Needs and Uses:* Prior to operating a Low Power Radio Service (LPRS) transmitter for Automated Maritime Telecommunications System (AMTS) purposes, an AMTS licensee must notify, in writing, each television station that may be affected by such operations, as defined in Section 80.215(h). The notification provided with the station's license application is sufficient to satisfy this requirement if no new television stations would be affected. The information is used by Commission staff and affected television stations to be aware of the location of potential harmful interference from AMTS operations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05-22478 Filed 11-8-05; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 05-2864]

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On November 4, 2005, the Commission released a public notice announcing the November 30, 2005 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

**DATES:** Wednesday, November 30, 2005, 9:30 a.m.

**ADDRESSES:** Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5-A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

**FOR FURTHER INFORMATION CONTACT:** Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418-1466 or [Deborah.Blue@fcc.gov](mailto:Deborah.Blue@fcc.gov). The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** Released: November 4, 2005. The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday, November 30, 2005, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW-C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

### Proposed Agenda—Wednesday, November 30, 2005, 9:30 a.m.\*

1. Announcements and Recent News
  2. Approval of Minutes
- Meeting of September 20, 2005



3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the North American Portability Management (NAPM) LLC
6. Status of the Industry Numbering Committee (INC) activities
7. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
8. Report of the Billing & Collection Working Group (B&C WG)
9. Reports from the Issues Management Groups (IMGs)  
—NANC Training IMG
10. Report of the Local Number Portability Administration (LNPA) Working Group
11. Report of the Numbering Oversight Working Group (NOWG)
12. Report of the Future of Numbering Working Group (FoN WG)
  - Report of pANI IMG
13. Special Presentations
14. Update List of the NANC Accomplishments
15. Summary of Action Items
16. Public Comments and Participation (5 minutes per speaker)

17. Other Business  
Adjourn no later than 5 p.m.  
Next Meeting: Tuesday, January 24, 2006.  
\* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.  
Federal Communications Commission.  
**James Bachtell,**  
*Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.*  
[FR Doc. 05-22352 Filed 11-8-05; 8:45 am]  
**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting Change in Date of Open Commission Meeting to Monday, October 31, 2005

October 28, 2005.  
The Federal Communications Commission previously announced on October 21, 2005, its intention to hold an Open Meeting on Friday, October 28, 2005, in Room TW-C305, at 445 12th Street, SW., Washington, DC.  
The date has been changed to Monday, October 31, 2005, commencing at 11 a.m.

The prompt and orderly conduct of Commission business required this change and no earlier announcement was possible.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418-0500; TTY 1-888-835-5322.

Federal Communications Commission.  
**William F. Caton,**  
*Deputy Secretary.*  
[FR Doc. 05-22051 Filed 11-1-05; 1:53 pm]  
**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Deletion of Agenda Items From October 31, 2005, Open Meeting

October 31, 2005.

The following items have been deleted from the list of Agenda items scheduled for consideration at the Monday, October 31, 2005, Open Meeting and previously listed in the Commission's Notice of Friday, October 21, 2005.

Item No.	Bureau	Subject
1 .....	Enforcement ...	<i>Title:</i> Review of the Emergency Alert System (DB Docket No. 04-296). <i>Summary:</i> The Commission will consider a First Report and Order and Further Notice of Proposed Rulemaking concerning the Emergency Alert System rules.
2. ....	Media .....	<i>Title:</i> Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (MB Docket no. 05-49) and Implementation of Section 340 of the Communications Act. <i>Summary:</i> The Commission will consider a Report and Order to adopt rules for satellite carriage of "significantly viewed" television stations pursuant to the Satellite Home Viewer Extension and Reauthorization Act (SHVERA).

Federal Communications Commission.  
**William F. Caton,**  
*Deputy Secretary.*  
[FR Doc. 05-22054 Filed 11-1-05; 1:53 p.m.]  
**BILLING CODE 6712-01-P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202-523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov)).  
*Agreement No.:* 010776-128.

*Title:* Asia North America Eastbound Rate Agreement.

*Parties:* American President Lines, Ltd.; APL Co. Pte Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; A. P. Moller-Maersk A/S; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; and P&O Nedlloyd Limited.

*Filing Party:* David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The modification extends the suspension of the conference through December 31, 2005.

*Agreement No.:* 011923.

*Title:* CSAV/NYK Brazil Space Charter Agreement.

*Parties:* Nippon Yusen Kaisha and Compania Sud-Americana de Vapores, S.A.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The agreement authorizes NYK to charter space from CSAV for motor vehicles in the trade between Miami, Florida, and ports in Brazil.

*Agreement No.:* 201162-001.

*Title:* NYSA-ILA Assessment Agreement.

*Parties:* New York Shipping Association, Inc. and the International Longshoremen's Association, AFL-CIO for the Port of New York and New Jersey.

*Filing Parties:* Nicholas G. Maglaras, Esq.; Lambos & Junge; 29 Broadway—9th Floor; New York, NY 10006; and Andre Mazzola, Esq.; Gleason & Mathews, P.C.; 26 Broadway—17th Floor; New York, NY 10004.

*Synopsis:* The modification reduces the assessment for certain containers.

By Order of the Federal Maritime Commission.

Dated: November 4, 2005.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 05-22370 Filed 11-8-05; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 App. U.S.C. 817 (d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival PLC (trading as P&O Cruises) and Princess Cruise Lines, Ltd., 24305 Town Center Drive, Santa Clarita, CA 91355, Vessel: Artemis, Arcadia.  
Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International) and Splendour of the Seas Inc., 1050 Caribbean Way, Miami, FL 33132-2096, Vessel: Splendour of the Seas.  
Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International) and Legend of the Seas Inc., 1050 Caribbean Way, Miami, FL 33132-2096, Vessel: Legend of the Seas.

Dated: November 4, 2005.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 05-22367 Filed 11-8-05; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 App. U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival PLC (trading as P & O Cruises) and Princess Cruise Lines, Ltd.,

24305 Town Center Drive, Santa Clarita, CA 91355, Vessel: Artemis, Arcadia.

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International), 1050 Caribbean Way, Miami, FL 33132-2096, Vessel: Freedom of the Seas II, Freedom of the Seas III.

Dated: November 4, 2005.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 05-22368 Filed 11-8-05; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

### Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Dolphin Logistics, Inc., 2437 Kiska Avenue, Hacienda Heights, CA 91745, *Officer:* Kenny Isung Tsai, CEO (Qualifying Individual).

Scotty's Caribbean Shipping, Inc., 608 East 38th Street, Brooklyn, NY 11203, *Officer:* Owen Duncan, President (Qualifying Individual).

Pinoy Express Cargo, Inc., 18800 Amar Road, Suite A-7, Walnut, CA 91789, *Officers:* Ray Nicolas Dumandan, Vice President (Qualifying Individual), Lawrence Lary Esguerra, President.

Admiral Global Services, Inc., dba ALG Admiral Global, Inc., 1101 Ellis Avenue, Bensenville, IL 60106, *Officers:* Christina Busch, Vice President (Qualifying Individual), Patricia R. Hezinger, President.

### Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Swift Global Logistics, Inc., 6033 W. Century Blvd., Suite 210, Los Angeles, CA 90045, *Officers:* Peter N. Landon, Vice President (Qualifying Individual), Paul J. Martins, President.

### Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Seibal Cargo Corp., 9080 SW 125 Avenue, #B103, Miami, FL 33186, *Officers:* Yenifer Ponce, Secretary (Qualifying Individual), Mauricio Arriaga, Vice President.

Sanjet Express, Inc., 1 West Street, New Hyde Park, NY 11040, *Officer:* Jane Chin Shuen Lieu, President (Qualifying Individual).

Dated: November 4, 2005.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 05-22369 Filed 11-8-05; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 2005.

**A. Federal Reserve Bank of Cleveland** (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Leonard Buckner*, Mt. Eaton, Ohio; to acquire voting shares of Apple Creek Banc Corp., and thereby indirectly acquire voting shares of Apple Creek Banking Company, both of Apple Creek, Ohio.

Board of Governors of the Federal Reserve System, November 4, 2005.

**Robert deV. Frierson,**  
*Deputy Secretary of the Board.*

[FR Doc. E5-6173 Filed 11-8-05; 8:45 am]

BILLING CODE 6210-01-S

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 2005.

**A. Federal Reserve Bank of Cleveland** (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Whitaker Bank Corporation of Kentucky*, Lexington, Kentucky; to acquire 100 percent of the voting shares of Berea Community Bank, Inc., Berea, Kentucky (currently known as Berea National Bank, Berea, Kentucky).

**B. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *First Citizens Financial Corp.*, Mason City, Iowa; to acquire 100 percent of the voting shares of Kanabec Credit Company, Mora, Minnesota, and thereby indirectly acquire Kanabec State Bank, Mora, Minnesota.

**C. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90

Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *First Sleepy Eye Bancorporation, Inc.*, Sioux Falls, South Dakota; to acquire 100 percent of the voting shares of Stearns Bank, Evansville, N.A., Evansville, Minnesota.

Board of Governors of the Federal Reserve System, November 3, 2005.

**Robert deV. Frierson**,  
*Deputy Secretary of the Board.*

[FR Doc. E5-6172 Filed 11-8-05; 8:45 am]

**BILLING CODE 6210-01-S**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 2005.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Patriot Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of

the voting shares of Patriot Bank, Houston, Texas.

**B. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Ruh Capital, LLC; Eggemeyer Family Trust; William J. Ruh Trust; Western States Opportunity LLC; Eggemeyer Capital LLC; and Castle Creek Capital III, LLC*, all of Rancho Santa Fe, California; to become bank holding companies by acquiring 100 percent of the voting shares of LDF, Inc., and thereby acquire Labe Bank, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, November 4, 2005.

**Robert deV. Frierson**,  
*Deputy Secretary of the Board.*  
[FR Doc. E5-6174 Filed 11-8-05; 8:45 am]

**BILLING CODE 6210-01-S**

**FEDERAL RESERVE SYSTEM****Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 2005.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Ruh Capital, LLC; Eggemeyer Family Trust; William J. Ruh Trust; Castle Creek Capital Partners III, L.P.; Western States Opportunity LLC; Eggemeyer Capital LLC; and Castle Creek Capital III, LLC*, all of Rancho Santa Fe, California; to acquire shares of Atlanta Bancorporation, Inc., Alpharetta, Georgia, and indirectly acquire Gibsonville Community Bank, Gibsonville, North Carolina, and thereby engage in operating a state savings bank, pursuant to section 225.25(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 4, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.E5-6175 Filed 11-8-05; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

[Docket No. OP-1241]

### Federal Reserve Bank Services

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board has approved the 2006 fee schedules for Federal Reserve priced services and electronic access and a private-sector adjustment factor (PSAF) for 2006 of \$117.7 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board has also approved maintaining the current earnings credit rate on clearing balances.

**DATES:** The new fee schedules become effective January 3, 2006, except the FedLine Select electronic connection fees, which become effective April 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the fee schedules: Jack K. Walton II, Associate Director (202/452-2660); Jeremy R. Mandell, Financial Services Analyst (202/452-2842), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Gregory L. Evans, Assistant Director, (202/452-3945); Brenda L. Richards, Manager, Financial Accounting (202/452-2753); or Jonathan Mueller, Financial Analyst (202/530-6291), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf

(TDD) *only*, please call 202-263-4869. Copies of the 2006 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services Web site at [www.frb services.org](http://www.frb services.org).

### SUPPLEMENTARY INFORMATION:

#### I. Priced Services

##### A. Discussion

From 1995 through 2004, the Reserve Banks recovered 97.5 percent of their total expense (including special project costs and imputed expenses) and targeted after-tax profits or return on equity (ROE) for providing priced services.<sup>1</sup>

Table 1 summarizes 2004, 2005 estimated, and 2006 budgeted cost recovery rates for all priced services. Cost recovery is estimated to be 103.6 percent in 2005 and budgeted to be 102.5 percent in 2006. The performance of the check service heavily influences the aggregate cost recovery rates and accounts for approximately 80 percent of the total cost of priced services. The electronic services (FedACH<sup>SM</sup>, the Fedwire<sup>®</sup> funds service and national settlement service (NSS), and the Fedwire<sup>®</sup> securities service) account for approximately 20 percent of total costs.<sup>2</sup> The noncash collection service represents a de minimis amount of total costs and, by year-end 2005, the Reserve Banks will exit the service.

TABLE 1.—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE <sup>a</sup>

[\$ millions]

Year	1 <sup>b</sup> Revenue	2 <sup>c</sup> Total expense	3 Net income (Roe) [1-2]	4 <sup>d</sup> Target ROE	5 Recovery rate after tar- get ROE [1/ (2+4)]
2004 .....	914.6	842.6	72.0	112.4	95.8%
2005 (estimate) .....	958.2	821.8	136.4	102.9	103.6%
2006 (budget) .....	911.1	817.1	94.0	72.0	102.5%

<sup>a</sup> Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

<sup>b</sup> Revenue includes net income on clearing balances (NICB). Clearing balances are assumed to be invested in a broad portfolio of investments, such as Treasury securities, government agency securities, commercial paper, municipal and corporate bonds, and money market and mutual funds. To impute income, a constant spread is determined from the historical average return on this portfolio and applied to the rate used to determine the cost of clearing balances. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. The cost of earnings credits is based on the discounted three-month Treasury bill rate.

<sup>c</sup> The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pensions under FAS 87 are also included.

<sup>d</sup> Target ROE is the after-tax ROE included in the PSAF. The 2006 target return on equity is lower than it has been historically because of a Board-approved change to the method used to calculate the targeted return on equity.

Table 2 presents an overview of the 2004, 2005 budget, 2005 estimate, and

2006 budget cost recovery performance by priced service.

<sup>1</sup> These imputed expenses, such as taxes that would have been paid, and the return on equity that would have to be earned had the services been furnished by a private business firm, are referred to

as the PSAF. The ten-year recovery rate is based upon the pro forma income statements for Federal Reserve Banks' priced services published in the Board's Annual Report.

<sup>2</sup> FedACH and Fedwire are registered servicemarks of the Reserve Banks.

TABLE 2.—PRICED SERVICES COST RECOVERY  
[percent]

Priced service	2004	2005 Budget	2005 Estimate	2006 Budget <sup>a</sup>
All services .....	95.8	100.1	103.6	102.5
Check .....	94.6	100.3	104.0	102.3
FedACH .....	103.0	100.4	102.2	101.0
Fedwire funds and NSS .....	99.4	100.1	101.4	105.6
Fedwire securities .....	102.6	102.8	101.3	105.9
Noncash collection .....	120.3	76.7	90.9	n.a.

<sup>a</sup> 2006 budget figures reflect the latest data from Reserve Banks. The Reserve Banks will transmit final budget data to the Board in November 2005, for Board approval in mid-December 2005.

n.a.—not applicable

#### 1. 2005 Estimated Performance

In 2005, the Reserve Banks estimate that they will recover 103.6 percent of the costs of providing priced services, including imputed expenses and targeted ROE, compared with a budgeted recovery rate of 100.1 percent, as shown in table 2. The Reserve Banks estimate that all services will achieve full cost recovery with the exception of the noncash collection service, from which the Reserve Banks will exit by year end. The Reserve Banks estimate that they will fully recover actual and imputed expenses and earn net income of \$136.4 million compared with the target of \$102.9 million. This greater-than-expected net income is largely driven by greater-than-expected (1) check volumes, (2) cost savings associated with the Reserve Banks' check restructuring efforts, and (3) net income on clearing balances (NICB).

The decline in paper check volume continues to have a significant effect on the Reserve Banks priced services.<sup>3</sup> Check use nationwide has been declining, in part because of the increased use of debit and credit cards, as well as the growing trend for merchants, billers, and others to covert checks into automated clearinghouse (ACH) transactions. These factors have led to a general decline in the interbank clearing of checks, including clearings through the Reserve Banks. In this environment, to meet their cost recovery objectives, the Reserve Banks have undertaken efforts to reduce the costs associated with the check service, including reducing the number of check processing sites from forty-five in 2003 to twenty-two by the end of 2006.

#### 2. 2006 Projected Performance

For 2006, the Reserve Banks project a priced services cost recovery rate of 102.5 percent. The 2006 fees for priced services are projected to result in a net income of \$94.0 million, or \$22.0 million more than needed to achieve full cost recovery. The major risks to the Reserve Banks' ability to achieve their budget targets are a greater decline in the Reserve Banks' check volume than the projected 13.8 percent, unanticipated problems with check office restructurings that could result in significant cost overruns, and greater-than-expected electronic payments volume loss to competitors. In light of these risks, the Reserve Banks will continue to refine their business and operational strategies to improve efficiency and reduce excess capacity and other costs. These strategies will position the Reserve Banks to achieve their financial and payment system objectives and statutory requirements over the long run.

#### 3. 2006 Pricing

The following summarizes the changes in the Reserve Banks' fee schedules for priced services in 2006:

##### Check

- The Reserve Banks will raise paper check fees for forward-collection check products 5.3 percent, return-check products 5.4 percent, and payor bank check products 5.3 percent.
- The Reserve Banks will decrease Check 21 fees for FedForward products 13.8 percent and to offer incentives to customers to use FedReceipt products.
- With the 2006 fee change, the price index for the check service will have increased 49 percent since 1997.

##### FedACH

- The Reserve Banks will reduce the input file fee one-third and the FedLine

Web origination returns and notification of change fee 40 percent.

- With the 2006 fee change, the price index for the FedACH service will have decreased 63 percent since 1997.

Fedwire funds and national settlement

- The Reserve Banks will raise the surcharge for offline funds transfers by one-third.
- With the 2006 fee change, the price index for the Fedwire funds and national settlement services will have decreased 57 percent since 1997.

Fedwire securities

- The Reserve Banks will raise the surcharge for offline securities transfers 51.5 percent and the joint custody fee 14.3 percent.
- With the 2006 fee change, the price index for the Fedwire securities service will have decreased 47 percent since 1997.

#### 4. 2006 Price Index

Figure 1 compares indexes of fees for the Reserve Banks' priced services with the GDP price deflator. Compared with the price index for 2005, the price index for all Reserve Bank priced services is projected to increase 3.0 percent in 2006. The price index for electronic payment services, as well as electronic access to Reserve Banks' priced services, is projected to decrease 1.0 percent in 2006. The price index for the paper-based payments services is projected to increase 5.4 percent in 2006. When projecting out to 2006, the price index for all priced services has increased a total of 12.1 percent since 1997. In comparison, from 1997 through 2004, the GDP deflator increased 14.4 percent.

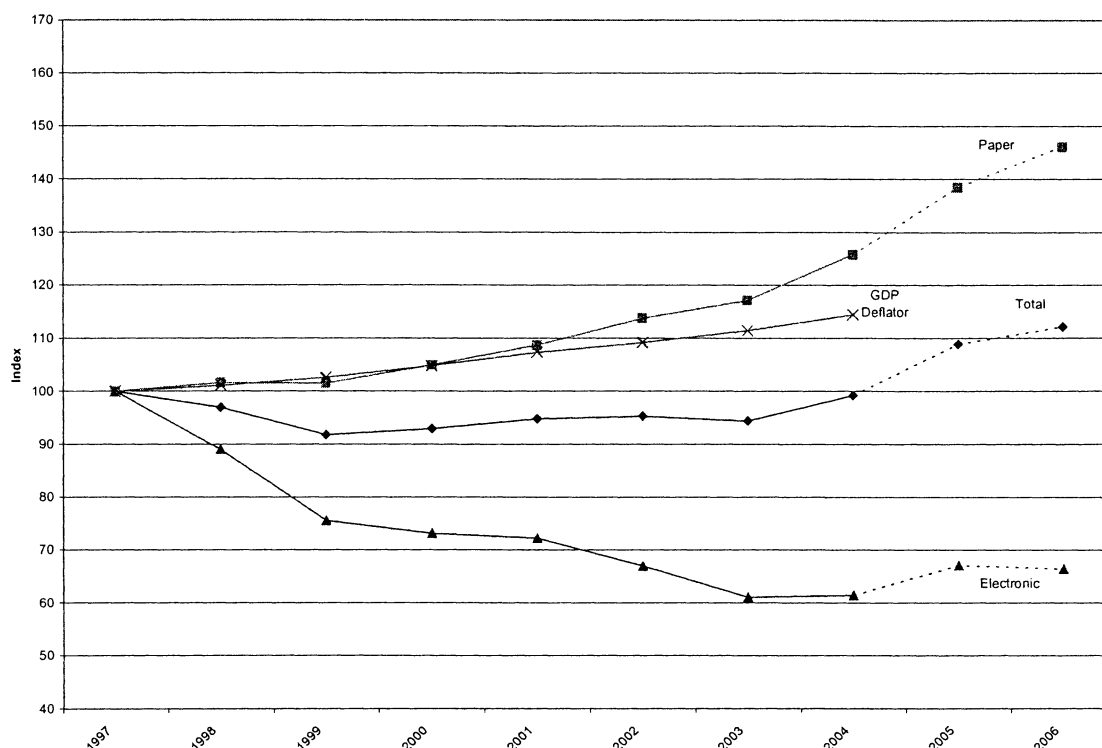
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<sup>3</sup> The Federal Reserve's 2004 retail payments research indicated that the total number of checks paid declined at an average annual rate of 4.3 percent from 2000 to 2003. This rate of decline is

greater than 3.3 percent average annual rate estimated to have occurred from 1995 to 2000. See Gerdes, Geoffrey R. and Jack K. Walton II, "Trends in the Use of Payment Instruments in the United

States," Federal Reserve Bulletin, Spring 2005, pp. 180–201. (See [http://www.federalreserve.gov/pubs/bulletin/2005/spring05\\_payment.pdf](http://www.federalreserve.gov/pubs/bulletin/2005/spring05_payment.pdf).)

**FIGURE 1**  
**PRICE INDEXES FOR FEDERAL RESERVE PRICED SERVICES**



### *B. Earnings Credits on Clearing Balances*

The Board has approved maintaining the current rate of 80 percent of the three-month Treasury bill rate to calculate earnings credits on clearing balances.<sup>4</sup> The Reserve Banks will continue to calculate earnings credits for the marginal reserve requirement adjusted portion of clearing balances at the federal funds rate.<sup>5</sup>

Clearing balances were introduced in 1981, as a part of the Board's implementation of the Monetary Control Act, to facilitate access to Federal Reserve priced services by institutions that did not have sufficient reserve balances to support the settlement of their payment transactions. Beginning in 2004, the earnings credit calculation was changed from using the federal funds rate to using a percentage discount on a rolling thirteen-week average of the annualized coupon

equivalent yield of three-month Treasury bills in the secondary market to better align Federal Reserve policy with market practice. Earnings credits can be used only to offset charges for priced services, are calculated monthly, and expire if not used within one year.<sup>6</sup>

### *C. Check Service*

Table 3 below shows the 2004, 2005 estimate, and 2006 budgeted cost recovery performance for the check service.

<sup>4</sup> Two adjustments are applied to the earnings credit rate so that the return on clearing balances at the Federal Reserve is comparable to what the DI would have earned had it maintained the same balances at a private-sector correspondent. The "imputed reserve requirement" adjustment is made because a private-sector correspondent would be required to hold reserves against the respondent's balance with it. As a result, the correspondent would reduce the balance on which it would base earnings credits for the respondent because it would be required to hold a portion, determined by its marginal reserve ratio, in the form of non-interest-bearing reserves. For example, if a DI held \$1 million in clearing balances with a correspondent bank and the correspondent had a marginal reserve ratio of 10 percent, then the correspondent bank would be required to hold \$100,000 in reserves, and it would typically grant credits to the respondent based on 90 percent of the balance, or \$900,000. This adjustment imputes a

marginal reserve ratio of 10 percent to the Reserve Bank.

The "marginal reserve requirement" adjustment accounts for the fact that the respondent can deduct balances maintained at a correspondent, but not the Federal Reserve, from its reservable liabilities. This reduction has value to the respondent when it frees up balances that can be invested in interest-bearing instruments, such as federal funds. For example, a respondent placing \$1 million with a correspondent rather than the Federal Reserve would free up \$30,000 if its marginal reserve ratio were 3 percent.

The formula used by the Reserve Banks to calculate earnings credits can be expressed as

$$e = [b * (1 - FRR) * r] + [b * (MRR) * f]$$

Where e is total earnings credits, b is the average clearing balance maintained, FRR is the assumed Reserve Bank marginal reserve ratio (10 percent), r is the earnings credit rate, MRR is the marginal reserve ratio of the DI holding the balance (either 0 percent, 3 percent, or 10 percent), and f is the

average federal funds rate. A DI that meets its reserve requirement entirely with vault cash is assigned a marginal reserve requirement of zero.

<sup>5</sup> This calculation adjusts earnings credits as though account holders could adjust their reserve requirement for a "due from deduction" for clearing balances held with a Reserve Bank.

<sup>6</sup> A band is established around the contracted clearing balance to determine the maximum balance on which credits are earned as well as any deficiency charges. The clearing balance allowance is 2 percent of the contracted amount, or \$25,00, whichever is greater. Earnings credits are based on the period-average balance maintained up to a maximum of the contracted amount plus the clearing balance allowance. Deficiency charges apply when the average balance falls below the contracted amount less the allowance, although credits are still earned on the average maintained balance.

TABLE 3.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE  
[\$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2004 .....	760.2	709.6	50.2	93.6	94.6%
2005 (estimate) .....	786.4	673.9	112.5	82.0	104.0
2006 (budget) .....	732.9	659.6	73.4	57.0	102.3

#### 1. 2005 Estimate

For 2005, the Reserve Banks estimate that the check service will recover 104.0 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 100.3 percent. The Reserve Banks expect to recover all actual and imputed expenses of providing check services and earn net income of \$112.5 million (see table 3).

The higher-than-budgeted cost recovery is the result of higher-than-expected revenue of \$53.7 million that

was partially offset by higher-than-expected expenses of \$24.0 million. The higher revenue is due to greater-than-budgeted check volumes, customer use of a higher priced product mix, greater-than-expected NICB, and explicit float revenue. The higher costs were largely due to the cost of processing greater-than-expected paper check volume and higher personnel costs related to Check 21 substitute check printing.

The greater-than-expected paper check volume can be attributed to the

slower-than-expected adoption of Check 21 products and lower-than-anticipated volume losses resulting from check office restructurings. For full-year 2005, the Reserve Banks estimate that paper forward-collection check volume will decline 12.0 percent, compared with a budgeted decline of 14.6 percent. The Reserve Banks expect that paper return check volume will decline 24.4 percent for the full year, compared with a budgeted decline of 27.0 percent.

TABLE 4.—PAPER CHECK PRODUCT VOLUME CHANGES  
[percent]

	Budgeted 2005 change	Actual change through August 2005	Estimated 2005 change
Total forward-collection <sup>a</sup>			
Forward-processed .....	(14.7)	(11.2)	(10.9)
Fine-sort <sup>a</sup> .....	(10.1)	(21.6)	(31.9)
Returns .....	(27.0)	(19.5)	(24.4)

<sup>a</sup> These rates exclude electronic fine-sort volume. Including the electronic fine-sort product, fine-sort volume was budgeted to decline 42.6 percent in 2005 and is now estimated to decline 33.7 percent.

While electronic check presentment volumes are expected to decline for full-year 2005 (see table 5), the share of electronic checks that the Reserve Banks present is expected to increase. Through

August 2005, the Reserve Banks presented approximately 26.2 percent of their checks electronically, which represents an increase from 24.6 percent in 2004. In addition to electronic check

presentment, through August 2005, the Reserve Banks captured images for about 12.3 percent of all checks they collected.

TABLE 5.—ELECTRONIC CHECK PRODUCT SHARE  
[percent]

	2004	2005 actual through Au- gust	2005 esti- mated
Truncation <sup>a</sup> .....	5.8	6.7	6.2
Non-truncation (Electronic Check Presentment) <sup>a</sup> .....	18.8	19.5	19.3
Electronic check information .....	6.3	6.0	6.1
Images .....	11.0	12.3	12.1

<sup>a</sup> ECP consists of truncated and non-truncated checks. Non-truncated checks include checks presented through the MICR presentment and MICR presentment plus products.

#### 2. 2006 Pricing

In 2006, the Reserve Banks project that the check service will recover 102.3 of total expenses and targeted ROE.

The Reserve Banks plan to maintain full cost recovery by continuing to streamline check processing and

administrative activities across the System as well as by increasing Check 21 volume. A number of cost reduction initiatives have been identified and are currently in various stages of implementation. These initiatives include eliminating six more check

processing sites by the end of 2006 and working to reduce various check support functions such as check adjustments and check automation

services in response to the declining volume.<sup>7</sup>

Total expenses are projected to decline by \$14.3 million, a decline of 2.1 percent when compared with the 2005 estimate. This decline is primarily attributable to lower local operating costs due to efficiency improvements at restructuring sites and declines in projected 2006 volumes. These lower costs are partially offset by higher temporary costs associated with further check restructuring and additional costs to support Check 21 products.

Revenue is projected to be \$732.9 million, a decline of 6.8 percent

compared to the 2005 estimate. This decline is driven by a \$75.9 million, or 10.7 percent, decline in fee revenue that is offset by a \$22.3 million increase in NICB. In 2006, the Reserve Banks project that paper check volume for forward products will decrease 13.9 percent, volume for return products will decrease 23.9 percent, and volume for payor bank products will decrease 20.4 percent. These expected volume declines will be partially offset by a projected increase in Check 21 volume.

Check 21 products have been offered for about one year, and the Reserve Banks anticipate significant growth in

2006 (see table 6).<sup>8</sup> The Reserve Banks project that FedForward volume will more than double, FedReturn volume will more than triple, and FedReceipt volume will increase almost twelvefold. The Reserve Banks have projected an increase in the 2006 Check 21 volume that will result in a doubling of Check 21 product revenue, to about \$44 million. Board and Reserve Bank staff believe that the key to realizing Check 21 cost efficiencies for the System is the widespread acceptance of FedReceipt by paying banks.

TABLE 6.—CHECK 21 VOLUME

	2006 Budgeted volume [millions of items]	Growth from 2005 estimate [percent]
FedForward .....	431.8	138.5
FedReturn .....	15.2	206.7
FedReceipt .....	57.5	1,084.3

In 2006, the Reserve Banks will continue to encourage the adoption of electronic check collection and presentment alternatives through modest price increases to paper check products and price reductions for some electronic products. The price increases for paper products generally are expected to be distributed across most product categories, with generally higher price increases for nonstrategic product lines. The Reserve Banks will also narrow the price ranges for similar products across the System. In addition, the Reserve Banks will offer depository institutions (DIs) greater incentives to deposit checks electronically and to accept image presentments. Longer term, as the use of Check 21-related products increases, the pricing of paper products may be strategically raised to encourage further adoption of electronic check collection and presentment alternatives.

For 2006, the Reserve Banks are targeting an overall price increase for paper check services of 5.3 percent (see table 7). This increase consists of a 5.3 percent increase in forward check-

collection fees, which is composed of a 4.9 percent increase in forward cash letter fees and a 5.4 percent increase in per-item fees. Fees for return services will increase by 5.4 percent, which is composed of a 5.9 percent increase in return cash letter fees and a 5.3 percent increase in per-item fees. The average volume-weighted fees for payor bank services will increase 5.3 percent.

TABLE 7.—2006 FEE CHANGES  
[percent]

Product	Fee change
Paper Check .....	5.3
Forward-collection .....	5.3
Cash Letter .....	4.9
Item .....	5.4
Returns .....	5.4
Cash Letter .....	5.9
Item .....	5.3
Payor bank services .....	5.3
Truncation .....	1.8
Non-truncation (electronic check presentment) .....	14.5
Electronic check information .....	13.8

TABLE 7.—2006 FEE CHANGES—  
Continued  
[percent]

Product	Fee change
Images .....	(1.0)
Check 21	
FedForward .....	(13.8)
FedReturn .....	0.0
FedReceipt .....	(\$.002) <sup>a</sup>

<sup>a</sup>FedReceipt customers will receive a \$0.002 discount per check presented. The discount can be used to offset other check service fees incurred by FedReceipt customers.

The primary risk to meeting the budgeted 2006 cost recovery is higher-than-expected paper check volume declines. Other risks include unanticipated problems with check office restructurings or other major initiatives that may result in significant cost overruns.

#### D. FedACH Service

Table 8 below shows the 2004, 2005 estimate, and 2006 budgeted cost recovery performance for the commercial FedACH service.

<sup>7</sup> In February 2003, the Reserve Banks announced an initiative to reduce the number of check processing locations from forty-five to thirty-two. In August 2004 and May 2005, the Reserve Banks announced two further rounds of restructurings. By

the end of these announced restructurings in 2006, the Reserve Banks will have twenty-two check processing locations.

<sup>8</sup> The Reserve Banks' Check 21 product suite includes FedForward, FedReturn, and FedReceipt.

FedForward is the electronic alternative to forward check collection; FedReturn is the electronic alternative to return items; and FedReceipt is electronic receipt of Check 21 items.



TABLE 8.—FEDACH PRO FORMA COST AND REVENUE PERFORMANCE  
[\$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE)[1-2]	4 Target roe	5 Recovery rate after target roe [1/(2+4)]
2004 .....	75.1	64.0	11.1	8.9	103.0%
2005 (estimate) .....	84.7	72.8	11.8	10.0	102.2
2006 (budget) .....	86.7	78.3	8.4	7.6	101.0

#### 1. 2005 Estimate

For 2005, the Reserve Banks estimate that the FedACH service will recover 102.2 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 100.4 percent. Total revenue is estimated to be \$2.6 million greater than the amount budgeted, and total expenses exceed budget by about \$1.3 million. Through August, FedACH commercial origination volume is 14.5 percent higher than the same period last year. For full-year 2005, the Reserve Banks estimate that FedACH originations will grow 12.7 percent, compared with the budgeted growth of 7.7 percent.

#### 2. 2006 Pricing

The Reserve Banks will reduce the input file fee one-third, from \$3.75 to \$2.50. This change is consistent with

the Reserve Banks' long-term strategy to decrease file fees. In addition, the Reserve Banks will reduce the FedLine Web notification of change fee 40 percent, from \$0.50 to \$0.30, to better align the fee with that of similar products.

The Reserve Banks project that the FedACH service will recover 101.0 percent of total expenses and targeted ROE in 2006. Total revenue is budgeted to increase \$2.1 million from the 2005 estimate, despite \$1.6 million less in fee revenue. The decrease in fee revenue is offset by NICB revenue, which is \$3.2 million larger than the 2005 estimate. Based on industry projections, the Reserve Banks estimate national ACH commercial origination volume will grow approximately 18 percent in 2006. This growth is largely attributable to volume increases associated with electronic check conversion

applications, including checks converted at lockboxes, and internet initiated payments. The Reserve Banks, however, have projected FedACH commercial origination volume growth of 7.6 percent in 2006 to reflect continued volume shifts to the private-sector ACH operator.

Total expenses and targeted ROE are budgeted to increase \$3.1 million over the 2005 estimate. The Reserve Banks have budgeted increased costs for product development and service initiatives, such as FedACH risk management services.

#### *E. Fedwire Funds and National Settlement Services*

Table 9 below shows the 2004, 2005 estimate, and 2006 budgeted cost recovery performance for the Fedwire funds and national settlement services.

TABLE 9.—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE  
[\$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 TABOET ROE	5 Recovery rate after Target ROE [1/(2+4)]
2004 .....	57.1	50.6	6.5	6.8	99.4%
2005 (estimate) .....	64.9	56.1	8.8	7.9	101.4
2006 (budget) .....	69.3	60.0	9.3	5.6	105.6

#### 1. 2005 Estimate

For 2005, the Reserve Banks estimate that the Fedwire funds and national settlement services will recover 101.4 percent of total expenses and targeted ROE, compared with a 2005 budgeted recovery rate of 100.1 percent. Fedwire funds achieved full cost recovery despite lower-than-budgeted fee revenue. Although the Reserve Banks have experienced higher-than-expected growth for online funds volume for 2005, most of the growth has been in the lowest-priced tier. Through August, online funds volume is 5.7 percent higher than it was for the same period last year. For full-year 2005, the Reserve Banks estimate that online funds

volume will grow 5.3 percent, compared with a budgeted growth of 2.8 percent. Also offsetting the lower-than-budgeted fee revenue is higher electronic connection revenue and NICB, as well as lower operating costs. With respect to the national settlement service, the Reserve Banks estimate that the volume of settlement entries processed during 2005 will be 1.4 percent higher than the 2005 budget projection.

#### 2. 2006 Pricing

The Reserve Banks will raise the surcharge for offline transfers one-third, from \$15 to \$20. The surcharge increase more closely aligns the fee with the costs of providing offline access to the Fedwire funds service.

In 2006, the Reserve Banks project that Fedwire funds and national settlement services will recover 105.6 percent of total expense and targeted ROE. The Reserve Banks project 2006 total revenue to increase by \$4.4 million over the 2005 estimate primarily because of the projected higher funds transfer volume and higher NICB and electronic connection revenue. Total expenses for 2006 are expected to increase \$3.9 million from the 2005 estimate primarily because of security and technology investments, including the cost to migrate from legacy systems to Internet protocol-based systems, and further enhance resiliency. Online funds transfer volume for 2006 is expected to increase 3.0 percent compared with the 2005 estimate. National settlement

service volume for 2006 is expected to remain flat compared with the 2005 estimate.

#### F. Fedwire Securities Service

Table 10 below shows the 2004, 2005 estimate, and 2006 budgeted cost

recovery performance for the Fedwire securities service.<sup>9</sup>

TABLE 10.—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[\$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE)[1-2]	4 Target ROE	5 Recovery rate after target ROE [1/ (2+4)]%
2004 .....	20.4	17.0	3.4	2.9	102.6
2005 (estimate) .....	21.0	17.9	3.1	2.9	101.3
2006 (budget) .....	22.1	19.1	3.0	1.8	105.9

#### 1. 2005 Estimate

For 2005, the Reserve Banks estimate that the Fedwire securities service will recover 101.3 percent of total expenses and targeted ROE, compared with a 2005 budgeted recovery rate of 102.8 percent. The lower-than-budgeted recovery is primarily attributable to \$0.6 million in lower-than-expected fee revenue associated with lower-than-expected transaction volume. Through August, online securities volume was flat compared to the same period last year. For full-year 2005, the Reserve Banks estimate that online securities volume will grow 1.1 percent, compared with a budgeted growth of 2.0 percent.

The shortfall in fee revenue was offset by higher-than-expected NICB revenue.

#### 2. 2006 Pricing

The Reserve Banks will raise the offline transfer origination and receipt surcharge from \$33 to \$50, and the joint custody origination surcharge from \$35 to \$40. The Reserve Banks will retain all other fees at their current levels. The surcharge increase more closely aligns the fees with the costs of processing these transactions.

The Reserve Banks project that the Fedwire securities service will recover 105.9 percent of total expense and targeted ROE in 2006. Total revenue is projected to increase \$1.1 million from the 2005 estimate primarily because of

higher NICB. Online securities volume in 2006 is budgeted to be flat against the 2005 estimate. Offline securities volume is projected to fall 9.0 percent against the 2005 estimate. Total expenses are expected to increase \$1.2 million from the 2005 estimate. In 2006, the Reserve Banks plan to continue to invest in security and technology projects to enhance resiliency, migrate from legacy systems to Internet protocol-based systems, and implement changes in payment system risk policy.

#### G. Noncash Collection Service

Table 11 below shows the 2004 and 2005 estimated cost recovery performance for the noncash collection service.

TABLE 11.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[\$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 Target ROE	5 Recovery rate after target ROE [1/ (2+4)]%
2004 .....	1.9	1.4	0.5	0.2	120.3
2005 (estimate) .....	1.2	1.1	0.1	0.2	90.9

#### 1. 2005 Estimate

For 2005, the Reserve Banks estimate that the noncash collection service will recover 90.9 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 76.7 percent. This greater-than-expected recovery is due to lower-than-expected costs of withdrawal. The Reserve Banks estimate that, in 2005, noncash collection volume will be 16.1 percent lower than

expected. Effective September 30, 2005, the Reserve Banks stopped accepting deposits of definitive municipal securities from DIs. The Reserve Banks plan to complete withdrawal from the service effective December 30, 2005.

#### 2. 2006 Pricing

The Reserve Banks will no longer offer the noncash collection service in 2006.

#### H. Electronic Access

The Reserve Banks allocate the costs and revenues associated with electronic access methods to the Reserve Banks' priced services.<sup>10</sup> There are four types of electronic access methods through which DIs can access the Reserve Banks' priced services: FedLine®, FedMail®, FedPhone®, and computer interface (mainframe to mainframe).<sup>11</sup> There are three ways DIs currently use FedLine to

<sup>9</sup> The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the

U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

<sup>10</sup> Certain electronic access fees are recorded as recoveries that offset the cost of providing these services. These fees are for ancillary services, such

as training and vendor pass-through charges. Therefore, these fees are not listed in the electronic access 2006 fee schedule below.

<sup>11</sup> Fedline, FedMail, and FedPhone are registered servicemarks of the Reserve Banks. These connections may also be used to access non-priced services provided by the Reserve Banks.

access the Reserve Banks' services: FedLine Web, FedLine Advantage, or FedLine DOS. Information services are available through FedLine Web, while transaction services are available through FedLine Advantage or FedLine DOS. For 2006, the Reserve Banks will change to the FedLine DOS connection fees as well as ancillary changes to frame relay spare parts and training fees.

The Reserve Banks will discontinue access to their services via FedLine DOS effective September 30, 2006. The Reserve Banks are migrating their customers to a tiered, web-based access structure. This migration is scheduled to be completed by September 30. At that time, FedLine customers will only be able to access Reserve Banks services via FedLine Web or FedLine Advantage. In the interim, those customers that have not yet migrated to web-based access can continue to use FedLine DOS. For those customers, the Reserve Banks bundle a FedLine DOS connection and a FedLine Web connection into a single FedLine Select package. In this arrangement, customers use their FedLine DOS connection to access transaction services and FedLine Web to access information services. The Reserve Banks will increase the fee for FedLine Select from \$200 to \$400 per month, beginning April 1, 2006, to encourage customers to move to FedLine Advantage before the September 30, 2006, sunset date.

The Reserve Banks will also increase the frame relay spare parts set fee and in-person and over-the-phone training fees. The fee increase for the frame relay spare parts set, from \$155 to \$175, is intended to ensure fee consistency with the complete 56 kbps frame relay product.<sup>12</sup> The fee increase for over-the-phone and in-person training, from \$100 to \$150 per session and \$800 to \$1,000 per session respectively, is intended to encourage the use of online training options that are offered at no cost.

## II. Private-Sector Adjustment Factor

### A. Background

Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as return

on equity (profit) that would have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the PSAF. In a comparable fashion, investment income is imputed and netted with related direct costs associated with clearing balances to estimate NICB.

### B. Private Sector Adjustment Factor

The method for calculating the financing and equity costs in the PSAF requires determining the appropriate levels of debt and equity to impute and then applying the applicable financing rates. In this process, a pro forma priced services balance sheet using estimated Reserve Bank assets and liabilities associated with priced services is developed and the remaining elements that would exist if the Reserve Banks' priced services were provided by a private business firm are imputed.

The amount of the Reserve Banks' assets that will be used to provide priced services during the coming year is determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Reserve Bank liabilities consists of balances held by Reserve Banks for clearing priced services transactions (clearing balances), and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances and long-term liabilities are not sufficient to fund long-term assets or if the interest rate risk sensitivity analysis, which measures the interest rate effect of the difference between interest rate sensitive assets and liabilities, indicates that a 200 basis point change in interest rates would change cost recovery more than two percentage points.<sup>13</sup> Short-term debt is imputed only when short-term liabilities and clearing balances not used to finance long-term assets are insufficient to fund short-term assets. Equity is imputed to meet the FDIC definition of a well-capitalized depository institution for insurance premium purposes.<sup>14</sup>

<sup>13</sup> A portion of clearing balances is used as a funding source for priced services assets. Long-term assets are partially funded from core clearing balances, currently \$4 billion. Core clearing balances are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

<sup>14</sup> The FDIC requirements for a well-capitalized depository institution are 1) a ratio of total capital to risk-weighted assets of 10 percent or greater; and 2) a ratio of Tier 1 capital to risk-weighted assets of 6 percent or greater; and 3) a leverage ratio of

### 1. Financing rates

Equity financing rates are based on the target ROE result of the capital asset pricing model (CAPM).<sup>15</sup> In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a risk premium. To implement CAPM, the risk-free rate is based on the three-month Treasury bill, the beta is assumed to be equal to 1.0, which approximates the risk of the market as a whole, and the monthly returns in excess of the risk-free rate over the most recent 40 years are used as the market risk premium. The resulting ROE influences the dollar level of the PSAF because this is the return a shareholder would expect in order to invest in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, a specific income tax expense is not calculated for Reserve Bank priced services. Instead, the Board targets a pretax ROE that would provide sufficient income to fulfill its income tax obligations.<sup>16</sup> To the extent that the actual performance results are greater or less than the targeted ROE, income taxes are adjusted using an imputed income tax rate. The imputed income tax rate is the median of the rates paid by the top fifty bank holding companies (BHCs) based on deposit balance over the past five years adjusted to the extent that they invested in tax-free municipal bonds. Because the Reserve Banks provide similar services through their correspondent banking activities, including payment and settlement services, and equity is imputed to meet the FDIC requirements of a well-capitalized depository institution, using a tax rate based on the top fifty BHCs by deposit balance continues to be an applicable and reasonable approach.

### 2. Other Costs

The PSAF also includes the estimated priced services-related expenses of the Board of Governors and imputed sales taxes based on Reserve Bank estimated expenditures. An assessment for FDIC insurance, when required, is imputed

Tier 1 capital to total assets of 5 percent or greater. The Federal Reserve priced-services balance sheet total capital has no components of Tier 1 or total capital other than equity; therefore, requirements 1 and 2 are essentially the same measurement.

<sup>15</sup> In October, the Board approved changes to the methodology used to derive the pretax ROE from using the average of the results of three analytical models, the comparable accounting earnings model (CAE), the discounted cash-flow model (DCF), and the CAPM, to using only the CAPM (70 FR 60341, October 17, 2005).

<sup>16</sup> Other taxes are included in price-services actual or imputed costs.

<sup>12</sup> The fee for the computer interface frame relay 56 kbps product is \$1,000 per month. The fee for the full circuit backup single equipment set is \$825 per month which, when combined with the \$175 per month spare parts set fee, is consistent with the complete frame relay product.

based on current FDIC rates and projected clearing balances held with the Federal Reserve.

### C. Net Income on Clearing Balances

The NICB calculation is made each year along with the PSAF calculation and is based on the assumption that Reserve Banks invest clearing balances net of imputed reserve requirements and balances used to finance priced-services assets. Based on these net clearing balance levels, Reserve Banks impute a constant spread, determined by the return on a portfolio of investments, over the three-month Treasury bill rate.<sup>17 18</sup> The calculation also involves determining the priced services cost of earnings credits (amounts available to offset service fees) on contracted clearing balances held, net of expired earnings credits, based on a discounted Treasury bill rate. Rates and clearing balance levels used in the NICB estimate are based on the most recent rates and clearing balance levels.<sup>19</sup> Because clearing balances are held for clearing priced services transactions or offsetting priced services fees, they are directly related to priced services. The net earnings or expense attributed to the investments and the cost associated with holding clearing balances, therefore, are considered net income for priced services activities.

### D. Discussion

The decrease in the 2006 PSAF is primarily due to the decrease in ROE, which results in a decrease in the cost of equity. Although clearing balances on which investments are imputed decreased, a similar offsetting increase in items in process of collection results in a small increase in total assets. Because equity is imputed at 5 percent of total assets, this small change in assets causes equity to remain unchanged from 2005.

#### 1. Asset Base

The estimated 2006 Federal Reserve assets, reflected in table 12, have increased \$0.3 million. The decline in imputed investments in marketable securities of \$546.0 million and in imputed reserve requirements of \$69.7 million, which are imputed based on

the estimated level of clearing balances held, are offset by an increase in items in process of collection due to higher estimated float receivables. As a result of consolidation and restructuring of several System priced services functions, furniture and equipment and bank premises assets are expected to decrease \$59.5 million in 2006.

As shown in table 13, the assets financed through the PSAF have decreased. Short-term assets funded with short-term payables and clearing balances total \$28.4 million. This represents a \$10.5 million decrease from the short-term assets funded in 2005 due to an increase in expected short-term payables. Long-term assets funded with long-term liabilities, equity, and core clearing balances are projected to total \$291.1 million. This represents a decrease of \$70.6 million from the long-term assets funded in 2005 because long-term assets have decreased.

#### 2. Debt and Equity Costs and Taxes

As previously mentioned, core clearing balances are available as a funding source for priced service assets. Table 13 shows that \$319.5 million in clearing balances is used to fund priced services assets in 2006. The interest rate sensitivity analysis in table 14 indicates that a 200 basis point decrease in interest rates affects the ratio of rate-sensitive assets to rate-sensitive liabilities and produces a decrease in cost recovery of 1.2 percentage points, while an increase of 200 basis points in interest rates increases cost recovery by 1.1 percentage points. The established threshold for a change in cost recovery is two percentage points; therefore, interest rate risk associated with using these balances is within acceptable levels and no long-term debt is imputed.

Table 15 shows the imputed PSAF elements, the pretax ROE, and other required PSAF costs for 2005 and 2006. The decrease in ROE lowers the estimated cost of equity in 2006. Sales taxes decreased from \$8.2 million in 2005 to \$7.7 million in 2006. The effective income tax rate used in 2006 increased to 29.8 percent from 29.6 percent in 2005. The priced service portion of the Board's expenses

increased \$0.9 million from \$6.6 million in 2005 to \$7.5 million in 2006.

### 3. Capital Adequacy and FDIC Assessment

As shown in table 12, the amount of equity imputed for the 2006 PSAF is \$808.0 million, unchanged from the imputed equity in 2005. As noted above and shown in table 16, equity is based on 5 percent of total assets and is greater than 10 percent of risk-weighted assets, as required by the FDIC definition of a well-capitalized depository institution for insurance premium purposes. In 2006, the capital to total assets ratio and the capital to risk-weighted asset ratio both meet or exceed regulatory guidelines. As a result, no FDIC assessment is imputed for 2006.

### III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy, "The Federal Reserve in the Payments System."<sup>20</sup> Under this policy, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If the change creates such an effect, the Board must further evaluate the change to assess whether its benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while minimizing the adverse effect on competition.

The Board believes that the 2006 fees, fee structures, or changes in service will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. The changes will permit the Reserve Banks to earn an ROE that is comparable to the returns of the overall market.

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<sup>17</sup> The investment portfolio is composed of investments comparable to a BHC's investment holdings, such as short-term Treasury securities, government agency securities, commercial paper, long-term corporate bonds, and money market

funds. See table 16 for the investments imputed in 2006.

<sup>18</sup> NICB is projected to be \$102.8 million for 2006 using a constant spread of 35 basis points over the three-month Treasury bill, and applying this rate to

the clearing balance levels used in the 2006 pricing process. The 2005 NICB estimate is \$73.8 million.

<sup>19</sup> July 2005 rates and balances were used to estimate the 2006 NICB.

<sup>20</sup> Federal Reserve Regulatory Service (FRRS) 9-1558.

Table 12  
Comparison of Pro Forma Balance Sheets  
for Federal Reserve Priced Services  
(millions of dollars – average for year)

	<u>2006</u>	<u>2005</u>	<u>Change</u>
<b>Short-term assets</b>			
Imputed reserve requirement on clearing balances	\$ 986.9	\$ 1,056.6	\$ (69.7)
Receivables	67.0	64.9	2.1
Materials and supplies	1.0	1.7	(0.7)
Prepaid expenses	26.8	28.5	(1.7)
Items in process of collection <sup>21</sup>	5,126.7	4,445.8	680.9
<b>Total short-term assets</b>	<u>6,208.4</u>	<u>5,597.5</u>	<u>610.9</u>
<b>Imputed investments</b>	\$ 8,562.6	\$ 9,108.6	\$ (546.0)
<b>Long-term assets</b>			
Premises <sup>22</sup>	385.8	394.9	(9.1)
Furniture and equipment	122.7	173.1	(50.4)
Leasehold improvements and long-term prepayments	84.6	79.7	4.9
Prepaid pension costs	796.0	806.0	(10.0)
<b>Total long-term assets</b>	<u>1,389.1</u>	<u>1,453.7</u>	<u>(64.6)</u>
<b>Total assets</b>	<u>\$ 16,160.1</u>	<u>\$ 16,159.8</u>	<u>\$ 0.3</u>
<b>Short-term liabilities<sup>23</sup></b>			
Clearing balances and balances arising from early credit of uncollected items	\$ 9,801.5	\$ 10,620.6	\$ (819.1)
Deferred credit items <sup>21</sup>	5,194.2	4,391.0	803.2
Short-term payables	66.4	56.2	10.2
<b>Total short-term liabilities</b>	<u>15,062.1</u>	<u>15,067.8</u>	<u>(5.7)</u>
<b>Long-term liabilities<sup>23</sup></b>			
Postemployment/retirement benefits	<u>290.0</u>	<u>284.0</u>	<u>6.0</u>
<b>Total liabilities</b>	<u>15,352.1</u>	<u>15,351.8</u>	<u>0.3</u>
<b>Equity</b>	<u>808.0</u>	<u>808.0</u>	<u>0.0</u>
<b>Total liabilities and equity</b>	<u>\$ 16,160.1</u>	<u>\$ 16,159.8</u>	<u>\$ 0.3</u>

<sup>21</sup> Represents float that is directly estimated at the service level.

<sup>22</sup> Includes allocations of Board of Governors' assets to priced services of \$1.4 million for 2005 and 2006.

<sup>23</sup> No debt is imputed because clearing balances are used as an available funding source.

Table 13  
Portion of Clearing Balances used  
to Fund Priced Services Assets  
(millions of dollars)

	<u>2006</u>	<u>2005</u>
A. Short-term asset financing		
Short-term assets to be financed:		
Receivables	\$ 67.0	\$ 64.9
Materials and supplies	1.0	1.7
Prepaid expenses	26.8	28.5
Total short-term assets to be financed	\$ 94.8	\$ 95.1
Short-term funding sources:		
Short-term payables	66.4	56.2
Portion of short-term assets funded with clearing balances <sup>24</sup>	\$ 28.4	\$ 38.9
B. Long-term asset financing		
Long-term assets to be financed:		
Premises	\$ 385.8	\$ 394.9
Furniture and equipment	122.7	173.1
Leasehold improvements and long-term prepayments	84.6	79.7
Prepaid pension costs	796.0	806.0
Total long-term assets to be financed	\$ 1,389.1	\$ 1,453.7
Long-term funding sources:		
Postemployment/retirement benefits	290.0	284.0
Imputed equity <sup>25</sup>	808.0	808.0
Total long-term funding sources	\$ 1,098.0	\$ 1,092.0
Portion of long-term assets funded with core clearing balances <sup>24</sup>	\$ 291.1	\$ 361.7
C. Total clearing balances used for funding priced-services assets	\$ 319.5	\$ 400.6

<sup>24</sup> Clearing balances shown on table 12 are available for financing priced-services assets. Using these balances reduces the amount available for investment for the NICB calculation. Long-term assets are financed with long-term liabilities and with core clearing balances; a total of \$4 billion in balances is available for this purpose. Short-term assets are financed with clearing balances not used to finance long-term assets. No short- or long-term debt is imputed.

<sup>25</sup> See table 15 for calculation of required imputed equity amount.

Table 14  
2006 Interest Rate Sensitivity Analysis<sup>26</sup>  
(millions of dollars)

	Rate sensitive	Rate insensitive	Total
<b>Assets</b>			
Imputed reserve requirement on clearing balances		\$ 986.9	\$ 986.9
Imputed investments	\$ 8,562.6		8,562.6
Receivables		67.0	67.0
Materials and supplies		1.0	1.0
Prepaid expenses		26.8	26.8
Items in process of collection <sup>27</sup>	(67.5)	5,194.2	5,126.7
Long-term assets		1,389.1	1,389.1
<b>Total assets</b>	<u>\$ 8,495.1</u>	<u>\$ 7,665.0</u>	<u>\$ 16,160.1</u>
<b>Liabilities</b>			
Clearing balances and balances arising from early credit of uncollected items <sup>28</sup>	\$ 7,762.6	\$ 2,038.9	\$ 9,801.5
Deferred credit items		5,194.2	5,194.2
Short-term payables		66.4	66.4
Long-term liabilities		290.0	290.0
<b>Total liabilities</b>	<u>\$ 7,762.6</u>	<u>\$ 7,589.5</u>	<u>\$ 15,352.1</u>
<b>Rate change results</b>			
		200 basis point decrease in rates	200 basis point increase in rates
Asset yield (\$8,495.1 x rate change)		\$ (169.9)	\$ 169.9
Liability cost (\$7,762.6 x rate change)		(155.3)	155.3
Effect of 200 basis point change		<u>\$ (14.6)</u>	<u>\$ 14.6</u>
2006 budgeted revenue		\$ 911.1	\$ 911.1
Effect of change		(14.6)	14.6
Revenue adjusted for effect of interest rate change		<u>\$ 896.5</u>	<u>\$ 925.7</u>
2006 budgeted total expenses		\$ 762.0	\$ 762.0
2006 budgeted PSAF		127.1	127.1
Tax effect of interest rate change (\$ change x 29.8%)		(4.4)	4.4
Total recovery amounts		<u>\$ 884.7</u>	<u>\$ 893.5</u>
Recovery rate before interest rate change		102.5 %	102.5%
Recovery rate after interest rate change		101.3 %	103.6%
Effect of interest rate change on cost recovery <sup>29</sup>		(1.2)%	1.1%

<sup>26</sup> The interest rate sensitivity analysis evaluates the level of interest rate risk presented by the difference between rate-sensitive assets and liabilities. The analysis reviews the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of a change in interest rates of up to 200 basis points.

<sup>27</sup> The amount designated rate sensitive represents the amount of cash items in process of collection that have been credited to customers prior to settlement.

<sup>28</sup> The amount designated rate insensitive represents clearing balances on which earnings credits are not paid.

<sup>29</sup> The effect of a potential change in rates is less than a 2 percentage point change in cost recovery; therefore, no long-term debt is imputed for 2006.

Table 15  
Derivation of the 2006 and 2005 PSAF  
(millions of dollars)

	<u>2006</u>		<u>2005</u>	
A. Imputed elements				
Short-term debt <sup>30</sup>	\$	0.0	\$	0.0
Long-term debt <sup>31</sup>	\$	0.0	\$	0.0
Equity				
Total assets from table 12	\$	16,160.1	\$	16,159.8
Required capital ratio <sup>32</sup>		<u>5%</u>		<u>5%</u>
Total equity	\$	808.0	\$	808.0
B. Cost of capital				
1. Financing rates/costs				
Short-term debt		N/A		N/A
Long-term debt		N/A		N/A
Pretax return on equity		12.7%		18.1%
2. Elements of capital costs				
Short-term debt		\$ 0.0		\$ 0.0
Long-term debt		0.0		0.0
Equity <sup>33</sup>	\$ 808.0 x	12.7% = <u>102.5</u>	\$ 808.0 x	18.1% = <u>146.2</u>
		\$ 102.5		\$ 146.2
C. Other required PSAF costs				
Sales taxes	\$	7.7	\$	8.2
Federal Deposit Insurance assessment		0.0		0.0
Board of Governors expenses		<u>7.5</u>		<u>6.6</u>
		15.2		14.8
D. Total PSAF		<u>\$ 117.7</u>		<u>\$ 161.0</u>
As a percent of assets		0.7%		1.0%
As a percent of expenses <sup>34</sup>		15.8%		22.2%
E. Tax rates		29.8%		29.6%

<sup>30</sup> No short-term debt is imputed because clearing balances are used as a funding source for those assets that are not financed with short-term payables.

<sup>31</sup> No long-term debt is imputed because clearing balances are used as a funding source.

<sup>32</sup> Based on the Federal Deposit Insurance Corporation's definition of a well-capitalized institution for purposes of assessing insurance premiums.

<sup>33</sup> As a result of the change in ROE methodology, the 2006 ROE is equal to a risk-free rate plus a risk premium (beta\*market risk premium). The 2006 after-tax CAPM ROE is calculated as 3.33% + (1\*5.58%) = 8.91%. Using a tax rate of 29.8%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of 12.69%.

<sup>34</sup> System 2006 budgeted priced services expenses less shipping are \$743.8 million.



Table 16  
Computation of 2006 Capital Adequacy  
for Federal Reserve Priced Services  
(millions of dollars)

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	\$ 986.9	0.0	\$ 0.0
Imputed investments:			
1 – year Treasury note <sup>35</sup>	4,188.4	0.0	0.0
Commercial paper (3 months) <sup>35</sup>	4,073.7	1.0	4,073.7
GNMA mutual fund <sup>36</sup>	300.5	0.2	60.1
	<u>\$ 9,549.5</u>		<u>\$ 4,133.8</u>
Receivables	67.0	0.2	13.4
Materials and supplies	1.0	1.0	1.0
Prepaid expenses	26.8	1.0	26.8
Items in process of collection	5,126.7	0.2	1,025.3
Premises	385.8	1.0	385.8
Furniture and equipment	122.7	1.0	122.7
Leases, leasehold improvements & long-term prepayments	84.6	1.0	84.6
Prepaid pension costs	<u>796.0</u>	1.0	<u>796.0</u>
Total	<u>\$ 16,160.1</u>		<u>\$ 6,589.4</u>
Imputed equity for 2006	\$ 808.0		
Capital to risk-weighted assets	12.3 %		
Capital to total assets	5.0 %		

<sup>35</sup> The imputed investments are assumed to be similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at <http://www.federalreserve.gov/releases/h15/data.htm>.

<sup>36</sup> The imputed mutual fund investment is based on Vanguard's GNMA Fund Investor Shares fund, which was chosen based on the investment strategies articulated in its prospectuses. The fund returns can be located at <http://flagship4.vanguard.com/VGApp/hnw/FundsByType>.

**FEDACH 2006 FEE SCHEDULE****EFFECTIVE JANUARY 3, 2006. BOLD INDICATES CHANGES FROM 2005 PRICES.**

	Fee
Origination (per item or record): <sup>37</sup>	
Items in small files	\$0.0030
Items in large files	\$0.0025
Addenda record	\$0.0010
Input file processing fee (per file):	<b>\$2.50</b>
Receipt (per item or record): <sup>38</sup>	
Item	\$0.0025
Addenda record	\$0.0010
Risk Product:	
Risk service subscription	<b>\$20.00</b>
Risk origination monitoring criteria	<b>\$15.00</b>
Risk origination monitoring batch	<b>\$0.0025</b>
Monthly fee (per routing number):	
Account servicing fee <sup>39</sup>	\$25.00
FedACH settlement <sup>40</sup>	\$20.00
Information extract file	\$10.00
FedLine Web origination returns and notification of change (NOC) fee: <sup>41</sup>	<b>\$0.30</b>
Voice response returns/NOC fee: <sup>42</sup>	\$2.00
Non-electronic input/output fee: <sup>43</sup>	
Tape input/output	\$25.00
Paper output	\$15.00
Facsimile exception returns/NOC <sup>44</sup>	\$15.00

<sup>37</sup> Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from the other private-sector ACH operator.

<sup>38</sup> Receipt fees do not apply to items that the Reserve Banks send to the other private-sector ACH operator.

<sup>39</sup> The account-servicing fee applies to routing numbers that have received or originated FedACH transactions. Institutions that receive only U.S. government transactions or that elect to use the other operator exclusively are not assessed the account-servicing fee.

<sup>40</sup> The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for government transactions only.

<sup>41</sup> The fee includes the transaction and addenda fees.

<sup>42</sup> The fee includes the transaction fee in addition to the voice-response fee.

<sup>43</sup> These services are offered for contingency situations only.

<sup>44</sup> The fee includes the transaction fee in addition to the conversion fee.

Canadian cross-border fee:	
Cross-border item surcharge <sup>45</sup>	\$0.039
Same-day recall of item at receiving gateway operator	\$3.50
Same-day recall of item not at receiving gateway operator	\$5.00
Item trace	\$5.00
Microfiche	\$3.00
Mexico service fee:	
Cross-border item surcharge <sup>45</sup>	\$0.67
Return received from Mexico	\$0.69
Item trace	\$11.50
Transatlantic service fee:	
Cross-border item surcharge <sup>45</sup>	
Austria	\$2.00
Germany	\$2.00
The Netherlands	\$2.00
Switzerland	\$2.00
United Kingdom	\$2.00
Return received from <sup>46</sup>	
Austria	\$5.00
Germany	\$8.00
The Netherlands	\$5.00
Switzerland	\$5.00
United Kingdom	\$8.00

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<sup>45</sup> The cross-border item surcharge is assessed in addition to the standard item, addenda, and file-processing fees.

<sup>46</sup> This per-item surcharge is in addition to the standard receipt fees.

**FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2006 FEE SCHEDULE****EFFECTIVE JANUARY 3, 2006. BOLD INDICATES CHANGES FROM 2005 PRICES.****Fedwire Funds Service**

	Fee
Basic volume-based transfer fee (originations and receipts)	
Per transfer for the first 2,500 transfers per month	\$0.30
Per transfer for additional transfers up to 80,000 per month	\$0.20
Per transfer for every transfer over 80,000 per month	\$0.10
Surcharge for offline transfers (originations and receipts)	<b>\$20.00</b>

**National Settlement Service**

Basic	
Settlement entry fee	\$0.80
Settlement file fee	\$14.00
Surcharge for offline file origination	\$25.00
Minimum monthly charge (account maintenance) <sup>47</sup>	\$60.00
Special settlement arrangements <sup>48</sup>	
Fee per day	\$100.00

<sup>47</sup> This minimum monthly charge will only be assessed if total settlement charges during a calendar month are less than \$60.

<sup>48</sup> Special settlement arrangements use Fedwire funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

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**FEDWIRE SECURITIES SERVICE 2006 FEE SCHEDULE  
(NON-TREASURY SECURITIES)****EFFECTIVE JANUARY 3, 2006. BOLD INDICATES CHANGES FROM 2005 PRICES.**

	Fee
Basic transfer fee	
Transfer or reversal originated or received	\$0.32
Surcharge	
Offline transfer or reversal originated or received	<b>\$50.00</b>
Monthly maintenance fees	
Account maintenance (per account)	\$15.00
Issues maintained (per issue/per account)	\$0.40
Claim adjustment fee	\$0.30
Joint custody fee	<b>\$40.00</b>

**ELECTRONIC ACCESS 2006 FEE SCHEDULE****EFFECTIVE JANUARY 3, 2006 (UNLESS OTHERWISE INDICATED). BOLD INDICATES CHANGES FROM 2005 PRICES.****FedLine**

FedLine Select Package (monthly) \$200.00 (until 3/31/06)  
**\$400.00 (effective 4/1/06)**

Includes: One dial – DOS-based FedLine  
 FedLine Web institution fee  
 Three individual subscriptions

Additional FedLine Web individual subscriber fee (monthly) \$15.00

Additional DOS-based FedLine – dial (monthly) \$100.00

Additional DOS-based FedLine – frame relay less than 56 kbps (monthly) \$825.00

Test

and contingency options for frame relay:

Full circuit backup<sup>49</sup> – single equipment set (monthly) \$825.00

Frame connection only<sup>50</sup> – single equipment set (monthly) \$693.00

Spare parts set<sup>51</sup> (monthly) **\$175.00**

FedLine Web (monthly) \$50.00

Set-up fee (one time) \$50.00

Individual subscriber fee (monthly) \$15.00

FedLine Advantage (monthly) \$250.00

Includes: One FedLine Advantage institution fee  
 Three FedLine Advantage individual subscriber digital certificates

Set-up fee (one time) \$400.00

VPN (monthly) \$50.00

Individual subscriber fee beyond first three (one time) \$100.00

Individual subscriber fee (monthly) \$20.00

<sup>49</sup> Prices shown are for full circuit backup of equal speed to the production circuit. Multiple customers sharing a single disaster recovery connection at a third-party provider require custom arrangements.

<sup>50</sup> Prices shown for a frame relay link connection with no ISDN dial-up backup. Multiple customers sharing a single disaster recovery connection at a third-party provider require custom arrangements.

<sup>51</sup> The redundant component set includes a Cisco router, a digital service unit, and a link encryptor.

**FedMail**<sup>52</sup>

FedMail Fax (monthly per fax line) \$15.00

**Computer Interface**

Frame relay-computer interface (CI) @ 56 kbps (monthly) \$1,000.00  
Frame relay-CI @ 256 kbps (monthly) \$2,000.00  
Frame relay-CI T1 (monthly) \$2,500.00

Test and contingency options for frame relay:<sup>53</sup>

CONNECTION TYPE	FULL CIRCUIT BACKUP	FRAME CONNECTION ONLY
CI @ 56 kbps	\$845	\$765
CI @ 256 kbps	\$1,750	\$1,585
CI T1	\$2,230	\$2,010

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<sup>52</sup> FedPhone and FedMail e-mail are free options.

<sup>53</sup> Some large CI customers are required to ensure that their contingency connections to the Federal Reserve are diversely routed. These customers are charged an additional \$1,000 per month to recover the Federal Reserve's cost of providing this network diversity.

By order of the Board of Governors of the Federal Reserve System, November 2, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05-22224 Filed 11-8-05; 8:45 am]

BILLING CODE 6210-01-C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Toxicology Program (NTP); Liaison and Scientific Review Office; Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM)

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

**ACTION:** Meeting announcement and request for comment.

**SUMMARY:** Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the SACATM on December 12, 2005. The meeting is scheduled from 8:30 a.m. to adjournment (~5 p.m.) and is open to the public with attendance limited only by the space available. SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the NIEHS regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings can be found at <http://ntp.niehs.nih.gov/> see "Advisory Board & Committees."

**DATES:** The SACATM meeting will be held on December 12, 2005. All individuals who plan to attend are encouraged to register online at the NTP Web site by December 5, 2005, at <http://ntp.niehs.nih.gov/> select "Advisory Boards & Committees." In order to facilitate planning for this meeting, persons wishing to make an oral presentation are asked to notify the Executive Secretary for SACTAM via online registration, phone, or e-mail by December 5, 2005, (see **ADDRESSES** below). Written comments should also be received by December 5, 2005, to

enable review by SACATM and NTP staff prior to the meeting.

**ADDRESSES:** The SACATM meeting will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314. Public comments and other correspondence should be directed to Dr. Kristina Thayer, Executive Secretary for SACATM (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233, MD A3-01, Research Triangle Park, NC 27709; telephone: 919-541-5021, fax: 919-541-0295; or e-mail: [thayer@niehs.nih.gov](mailto:thayer@niehs.nih.gov)). Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919-541-2475 voice, 919-541-4644 TTY (text telephone), through the Federal TTY Relay System at 800-877-8339, or by e-mail to [niehsoeeo@niehs.nih.gov](mailto:niehsoeeo@niehs.nih.gov). Requests should be made at least 7 days in advance of the event.

#### SUPPLEMENTARY INFORMATION:

#### Preliminary Agenda and Availability of Meeting Materials

A preliminary agenda is provided below. Additional background material will be posted on the NTP Web site as available at <http://ntp.niehs.nih.gov/> see "Advisory Board & Committees" or available upon request (see **ADDRESSES** above). Following the meeting, summary minutes will be prepared and available at this Web site and upon request.

Preliminary Agenda, Scientific Advisory Committee on Alternative Toxicological Methods, December 12, 2005, Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314. 8:30 a.m.

- Call to Order, Introductions, and Recognition of Retiring Members.
  - NICEATM and ICCVAM Update.
  - Overview of the May 2005 Ocular Toxicity Scientific Symposia.
    - Mechanisms of Chemically-Induced Ocular Injury and Recovery.
    - Reducing Pain and Distress in Ocular Safety Testing.
  - Performance Characteristics of the In Vivo Ocular Irritancy Test.
    - Public Comment.
  - ICCVAM Evaluation of In Vitro Methods to Identify Ocular Severe Irritants and Corrosives: Report from the Expert Panel (Presentation).
    - Bovine Corneal Opacity and Permeability (BCOP) Assay.
    - Isolated Chicken Eye (ICE) Assay.
    - Isolated Rabbit Eye (IRE) Assay.
    - Hen's Egg Test—Chorion Allantoic Membrane (HET-CAM) Assay.
    - Reference Chemicals.
- 12 p.m.

#### LUNCH BREAK.

1 p.m.

- ICCVAM Evaluation of In Vitro Methods to Identify Ocular Severe Irritants and Corrosives: Report from the Expert Panel Continued.

- Public Comment.

- ICCVAM Nominations.

- Public Comment.

- ICCVAM-NICEATM-ECVAM Workshop on Validation Principles and Approaches for Toxicogenomic-based Method.

- Public Comment.

- ECVAM Update.

- SACATM General Discussion.

~5 p.m.

ADJOURN.

#### Request for Comments

Public input at this meeting is invited and time is set aside for the presentation of public comments. Each organization is allowed one time slot per public comment period. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to the Executive Secretary for SACATM (see **ADDRESSES** above) by December 5, 2005, to enable review by SACATM and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution and to supplement the record. Written comments received in response to this notice will be posted on the NTP Web site. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

#### Background Information on SACATM

The SACATM was established January 9, 2002, to fulfill section 3(d) of Public Law 106-545, the ICCVAM Authorization Act of 2000 [42 U.S.C. 285l-3(d)] and is composed of scientists from the public and private sectors (**Federal Register**: March 13, 2002: Vol. 67, No. 49, page 11358). The SACATM provides advice to the Director of the NIEHS, ICCVAM, and NICEATM regarding statutorily mandated duties of ICCVAM and activities of NICEATM. Additional information about SACATM,



including the charter, roster, and records of past meetings can be found at <http://ntp.niehs.nih.gov/> see "Advisory Board & Committees." Information about NICEATM and ICCVAM activities can be found at the NICEATM/ICCVAM Web site (<http://iccvam.niehs.nih.gov>) or by contacting the Director of NICEATM, Dr. William Stokes (telephone: 919-541-2384, or E-mail: [niceatm@niehs.nih.gov](mailto:niceatm@niehs.nih.gov)).

Dated: October 26, 2005.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences.*

[FR Doc. 05-22320 Filed 11-8-05; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Prospective Grant of Exclusive License: Cleaning Mucus From Endotracheal Tubes

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in E-061-2004/0, "Mucus Shaving Apparatus for Endotracheal Tubes" (Patent Application Ser. No. 10/773,570 filed February 5, 2004), and E-061-2004/1, "Mucus Shaving Apparatus for Endotracheal Tubes with Bacteriocidal Properties" (International Patent Application PCT/US2005/003395 filed February 5, 2005), to C.R. Bard, Inc., a New Jersey corporation having its headquarters in Murray Hill, New Jersey and a division, Bard Medical Division, having offices in Covington, GA. The United States of America is the assignee of the patent rights of the above invention.

The contemplated exclusive license may be granted in the field of cleaning mucus deposits from endotracheal tubes.

**DATES:** Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before January 9, 2006 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the

contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 435-5019; Facsimile: (301) 402-0220; E-mail: [shmilovm@mail.nih.gov](mailto:shmilovm@mail.nih.gov). A signed confidentiality nondisclosure agreement will be required to receive copies of the patent applications.

**SUPPLEMENTARY INFORMATION:** The patent applications intended for licensure disclose and/or cover the following: E-061-2004/0, "Mucus Shaving Apparatus for Endotracheal Tubes," and E-061-2004/1, "Mucus Shaving Apparatus for Endotracheal Tubes with Bacteriocidal Properties."

This invention is an endotracheal tube cleaning apparatus for insertion into the inside of the endotracheal tube of a patient to shave away mucus deposits. This cleaning apparatus comprises a flexible central tube with an inflatable balloon at its distal end. Affixed to the inflatable balloon are one or more shaving rings, each having a squared leading edge to shave away mucus accumulations implicated in bacterial accumulation. In operation, the un-inflated cleaning apparatus is inserted into the endotracheal tube until its distal end is properly aligned with the distal end of the endotracheal tube. After proper alignment, the balloon is inflated by a suitable inflation device (e.g., a syringe) until the balloon's shaving rings are pressed against the inside surface of the endotracheal tube. The cleaning apparatus is then pulled out of the endotracheal tube and in the process the balloon's shaving rings shave off the mucus deposits from the inside of the endotracheal tube.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 31, 2005.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 05-22319 Filed 11-8-05; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

**AGENCY:** Federal Emergency Management Agency (FEMA), Department of Homeland Security.

**ACTION:** Notice of open meeting.

**SUMMARY:** FEMA announces the following open meeting.

*Name:* Federal Interagency Committee on Emergency Medical Services (FICEMS).

*Date of Meeting:* December 1, 2005.

*Place:* 3rd Floor Conference Center, Potomac Room, Parklawn Building, 5600 Fishers Lane Rockville, Maryland 20857.

*Times:* 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Ambulance Safety Subcommittee.

*Proposed Agenda:* Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; Action Items review; presentation of member agency reports; and reports of other interested parties.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below. For those driving, parking is \$7.00 per day.

*Response Procedures:* Committee Members and members of the general public who plan to attend the meeting should contact Mr. Mike McKay, on or before Tuesday, November 29, 2005, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166-8503, or by telephone at (703) 674-0190, or via facsimile at (703) 674-0195, or via e-mail at [mmckay@natekinc.com](mailto:mmckay@natekinc.com). This is necessary to be able to create and provide a current roster of visitors to HRSA Security per directives.

*Security Procedures:* Increased security controls and surveillance are in effect at the Parklawn Building/HRSA facilities. All visitors must have a valid

picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while in the facility. Please allow adequate time before the meeting to complete the security process.

**Conference Call Capabilities:** If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10 a.m. until 4 p.m. Members should call in around 10:30 a.m. The number is 1-800-320-4330. The FICEMS conference code is "885721#."

**FICEMS Meeting Minutes:** Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 2, 2006. The minutes will also be posted on the United States Fire Administration Web site at <http://www.usfa.fema.gov/fire-service/ems/ficems.shtm> within 30 days after their approval at the March 2, 2006 FICEMS Committee Meeting.

Dated: November 2, 2005.

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 05-22318 Filed 11-8-05; 8:45 am]

BILLING CODE 9110-17-U

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Gila River Indian Community—Sale and Consumption of Alcoholic Beverages

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Gila River Indian Community Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Gila River Indian Reservation. The Reservation is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the exterior boundaries of the Gila River Indian Reservation. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Ordinance is effective on November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Sharlot Johnson, Tribal Government Services Officer, Western Regional Office, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379-6786; Fax (602) 379-4100; or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., Mail Stop 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 Gila River Indian Community Council adopted its Liquor Control Ordinance by Ordinance No. GR-03-05 on April 6, 2005. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Gila River Indian Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Gila River Indian Community was duly adopted by the Community Council on April 6, 2005.

Dated: November 2, 2005.

**Michael D. Olsen,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

The Gila River Indian Community Liquor Ordinance reads as follows:

#### Gila River Indian Community Law and Order Code, Title 14, Alcoholic Beverages

##### *Chapter 1. Legalizing the Introduction, Possession, Storage, and Sale of Alcoholic Beverages in the Gila River Indian Community: Definitions*

14.101 Members of the Gila River Indian Community and other persons are hereby authorized to introduce, possess, store and sell alcoholic beverages in accordance with all Community ordinances, rules, and regulations, and state and federal law to the extent they apply. Such possession, storage, and sale is permitted in these enumerated situations:

1. Possession of alcoholic beverage is permitted throughout the Gila River Indian Reservation.

2. *Locations For Introduction, Storage and Sale Of Alcoholic Beverages.* The

introduction, storage, and sale of alcoholic beverages is permitted upon application to and approval by the Gila River Indian Community Council, as further described in Chapter 14.202 of this Ordinance. Such permission shall apply to a corridor extending one-half mile on either side of centerline of Interstate 10, where it crosses the Reservation, and in the following areas: parcels within Township 2 South, Range 4 East of the Gila and Salt River Base and Meridian, a part of the Gila River Indian Reservation located in Arizona.

a. *More particularly:* The True Point of Beginning at a point of the North line of said Township 2 south, Range 4 East on the centerline of Interstate 10, thence westerly on said Township line to a Point on a line which is one-half mile westerly and parallel to the Interstate 10 centerline, thence *southerly* on said one-half mile line to a point on the centerline on the Broadacres canal, thence *southwesterly* on said canal centerline to the North-South midsection line of Section 6, Township 2 South, Range 4 East, thence *south* on the midsection lines of section 6, 7 and 18 to the centerpoint of Section 18, Township 2 South, Range 4 East, thence *easterly* on the East-West midsection lines of Section 18, 17, and 16 to the centerline of said Interstate 10, thence *northwesterly* along said centerline to the North line of said Township 2 South, Range 4 East, the true Point of Beginning;

b. *Together with:* A parcel which True Point of Beginning in the Northeast corner of Section 4, of said Township 2 south, Range 4 East, thence *westerly* on the North line of Township 2 South, Range 4 East, to the Easterly right-of-way line of Interstate 10, thence *southeasterly* on said right-of-way line to the south section line of section 9, Township 2 South, Range 4 East, thence EAST on said section 9 south section line to the southeast corner of Section 9, thence northerly on the East Section lines of Section 9 and Section 4, Township 2 South, Range 4 East to the True Point of the Beginning;

c. *Also together with:* The property as described within the Memorial Airport lease, all in Township 2 South, Range 4 East of the Gila and Salt River Base and Meridian, to wit:

*Section 14*

SW $\frac{1}{4}$

*Section 15*

S $\frac{1}{2}$ , NE $\frac{1}{4}$

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*Section 22*N<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>*Section 23*NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>N<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>N<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>N<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>*Section 24*NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>W<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>N<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>N<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>N<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>N<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>

d. *Also together with:* A parcel of land commonly referred to as the "Wild Horse Pass Development Area," situated within the SE<sup>1</sup>/<sub>4</sub> of the SE<sup>1</sup>/<sub>4</sub> of Section 1, the E<sup>1</sup>/<sub>2</sub> of the NE<sup>1</sup>/<sub>4</sub> and SE<sup>1</sup>/<sub>4</sub> of Section 12, NE<sup>1</sup>/<sub>4</sub> of the NE<sup>1</sup>/<sub>4</sub> of Section 13, Township 2 South, Range 3 East, the S<sup>1</sup>/<sub>2</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 5, the S<sup>1</sup>/<sub>2</sub> of the SW<sup>1</sup>/<sub>4</sub> and SE<sup>1</sup>/<sub>4</sub> of Section 6, all of Section 7, W<sup>1</sup>/<sub>2</sub> of Section 8, N<sup>1</sup>/<sub>2</sub> of the NW<sup>1</sup>/<sub>4</sub> of Section 17, N<sup>1</sup>/<sub>2</sub> of the NW<sup>1</sup>/<sub>4</sub> and NE<sup>1</sup>/<sub>4</sub> of Section 18, Township 2 South, Range 4 East of the Gila and Salt Meridian.

3. *Introduction, Storage, Sale of Alcoholic Beverages At Other Locations.* The introduction, storage, and sale of alcoholic beverages on any part of the Reservation other than in the areas described in Chapter 14.101(2) is permitted upon application to and approval by the Gila River Indian Community Council as further described in Chapter 14.202; provided that the Council shall not approve the application. The vote described in this paragraph shall occur at a regular meeting of the affected District, and shall require the Community members residing in the affected District, who are present and vote at such regular meeting, to recommend approval of the application by majority vote.

4. The Gila River Indian Community Council may adopt further resolutions as may be necessary to implement this Ordinance.

14.102 *Definitions.* In this Title, unless the context otherwise requires:

1. "Beer" means any beverage obtained by the alcoholic fermentation, infusion, or decoction of barley malt, hops, or other ingredients not drinkable, or any combination thereof.

2. "Broken package" means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork, or seal placed thereupon by the manufacturer has been removed.

3. "Club" includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members only:

a. A post, chapter, camp, or other local unit composed solely of veterans and its duly recognized auxiliary which has been chartered by the Congress of the United States for patriotic, fraternal, or benevolent purposes and which has, as the owner, lessee, or occupant, operated an establishment for that purpose within the Reservation.

b. A chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization which has as the owner, lessee or occupant operated an establishment for fraternal purposes within the Reservation. An American national fraternal organization as used in this subdivision shall actively operate in not less than thirty-six states or have been in active continuous existence for not less than twenty years.

c. A hall or building association of a local unit mentioned in subdivisions (a) and (b) of this paragraph, all of the capital stock of which is owned by the local unit or the members, and which operates the clubroom facilities of the local unit.

d. A golf club which has more than fifty bona fide members which owns, maintains, or operates a bona fide golf links together with a clubhouse.

e. A social club which has more than fifty bona fide members who are actual residents of the county in which it is located, that owns, maintains or operates club quarters, is authorized and incorporated to operate as a non-profit club under the laws of this Community, and has been continuously incorporated and operating for a period of not less than one year. The club shall have had, during this one-year period, a bona fide membership with regular meetings conducted at least once each month and the membership shall be and shall have been actively engaged in carrying out the objectives of the club. The club's membership shall consist of bona fide dues paying members paying at least six dollars per year, payable monthly, quarterly, or annually, which have been recorded by the secretary of the club, and the members at the time of application for a club license shall be in good standing having for at least one full year paid dues. At least fifty-one percent of the members shall have signified their intention to secure a social club license by personally signing a petition, on a form prescribed by the Committee, which shall also include the correct mailing address of each signer. The petition shall not have been signed by a member at a date earlier than thirty days prior to the filing of the petition.

It is the intent of this paragraph that a license shall not be granted to a club which is, or has been primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club.

4. "Committee" means the Government and Management Standing Committee, a committee of the Gila River Indian Community Council.

5. "Community" means the Gila River Indian Community.

6. "Company" or "association" when used in reference to a corporation includes successors or assigns.

7. "Council" means the Gila River Indian Community Council.

8. "License" means a license or an interim retail permit issued pursuant to the provisions of this Ordinance.

9. "Off-sale retailer" means any person operating a bona fide regularly established retail liquor store selling spirituous liquors, wines and beer, and any established retail store selling commodities other than spirituous liquors and engaged in the sale of spirituous liquors only in the original package, to be taken away from the premises of the retailer and to be consumed off the premises.

10. "On-sale retailer" means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

11. "Premises" or "licensed premises" means the area from which the licensee is authorized to sell, dispense, or serve spirituous liquors under the provisions of the license.

12. "Person" includes partnership, limited liability company, association, company, or corporation, as well as a natural person.

13. "Reservation" means the Gila River Indian Reservation, located in the counties of Maricopa and Pinal in the State of Arizona.

14. "Sell" includes soliciting and receiving an order for, keeping or exposing for sale, directly or indirectly delivering for value, peddling, or keeping with the intent to sell and trafficking in.

15. "Spirituous liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or beverage, absinthe, a compound or mixture of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and

beverages containing more than one-half of one percent of alcohol by volume.

16. "Vehicle" means any means of transportation by land, water, or air, and includes everything made use of in any way for such transportation.

17. "Wine" means the product obtained by the fermentation of grapes or other agricultural products natural or added sugar or any such alcoholic beverages fortified with grape brandy and containing not more than twenty-four percent alcohol by volume.

#### *Chapter 2. Jurisdiction, Licensing, and Exemptions*

14.201 *Jurisdiction.* The Gila River Indian Community Court is vested with original jurisdiction to hear and decide all matters arising pursuant to this article.

14.202 *License Applications.* Liquor license applications shall be filed with the Government and Management Standing Committee of the Gila River Indian Community Council.

1. The Committee shall review all liquor license applications and provide the Community Council with a recommendation as to the disposition of the application. A spirituous liquor license shall be issued only after a satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of club licenses, that the public convenience requires and that the best interests of the Community will be substantially served by the issuance.

2. All applications shall be referred to the District in which the applicant seeks to do business, except for applications in which the applicant will conduct business within the areas referenced in Chapter 14.101(2) of this Ordinance, which do not require District approval.

3. *License Issuance Contingent Upon Possession Of Gila River Indian Community Business License.* Any person or organized business entity that applies for a liquor license to manufacture, sell, or deal in spirituous liquors within the exterior boundaries of the Gila River Indian Reservation shall possess a Community Business License before being issued a liquor license.

4. *Liquor Issuance Contingent Upon Possession Of Arizona Liquor License.* Issuance of a Community Liquor License shall be contingent upon the applicant obtaining a liquor license of the same type from the Department of Liquor Licenses and Control of the State of Arizona.

14.203 *Scope of License.* A license issued under this Ordinance shall permit the licensee to manufacture, sell, or deal in spirituous liquors only at the place and in the manner provided

therein, and a separate license shall be issued for each specific business. Each license shall specify the:

1. Particular spirituous liquors which the licensee is authorized to manufacture, sell, or deal in.

2. Licensee's mailing and physical address and business or trade name.

3. Purpose for which the spirituous liquors shall be manufactured or sold.

14.204 *Transfer of License.* No Community license shall be transferred without the prior written consent of the Gila River Indian Community Council.

14.205 *Expiration of License.* Every license expires annually, measured from the date of issuance.

1. A licensee who fails to renew the license on or before the due date shall pay a penalty of one hundred dollars (\$100) with their application for renewal.

2. A license renewal application that is deposited, properly addressed, and postage provided in an official depository of the United States on or before the due date shall be deemed filed and received by the Committee on the date shown by the postmark or other official mark of the United States postal service.

3. If the due date falls on a Saturday, Sunday, or other Community-recognized holiday, the renewal shall be deemed timely if received by the Committee on the next business day.

4. A licensee who fails to renew the license on or before the due date shall not sell, purchase, or otherwise deal in spirituous liquor until the license is renewed.

5. A license not renewed within twenty (20) working days after the due date shall be deemed terminated.

14.206 *Exemptions.* This Ordinance shall not apply to drugstores selling spirituous liquors only upon prescription or to ethyl alcohol used for the following purposes:

1. Scientific, chemical, mechanical, industrial, and medicinal purposes.

2. Use by those authorized to procure spirituous liquor or ethyl alcohol tax-free, as provided by the acts of Congress and regulations promulgated thereunder.

3. In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations promulgated thereunder.

4. In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic toilet, scientific, chemical, mechanical and industrial preparations or products, unfit and not used for beverage purposes.

5. In the manufacture of flavoring extracts and unfit for beverage purposes.

#### *Chapter 3. Fees*

14.301 *Disposition of Fees.* All license fees and fines collected under this Ordinance shall be paid to the Community Treasurer's Office and deposited in the Gila River Indian Community's general fund, unless otherwise directed by Community Council resolution.

14.302 *Fees.* All applications for liquor licenses shall include full payment of the fees described herein. Original license application fees shall be refunded to the applicant if the application is denied.

##### *1. Application Fees For An Original Community License.*

a. Distiller's, Brewer's, or Vintner's license: one hundred dollars (\$100).

b. Wholesaler's license to sell spirituous liquors: one hundred dollars (\$100).

c. On-sale retailer's license to sell all spirituous liquors in individual portions and in the original container: one hundred dollars (\$100).

d. Off-sale retailer's license to sell all spirituous liquors: one hundred dollars (\$100).

e. Club license issued in the name of a bona fide club qualified under this Ordinance to sell all liquors on-sale: one thousand dollars (\$1,000).

f. Hotel-motel license issued as such to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel: one thousand dollars (\$1,000).

g. Restaurant license issued to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant: one thousand dollars (\$1,000).

##### *2. Renewal Fees.*

a. Distiller's, Brewer's, or Vintner's license: three hundred dollars (\$300).

b. Wholesaler's license to sell spirituous liquors: two hundred fifty dollars (\$250).

c. On-sale retailer's license to sell all spirituous liquors in individual portions and in the original container: one hundred dollars (\$100).

d. Off-sale retailer's license to sell all spirituous liquors: fifty dollars (\$50).

e. Hotel-motel license issued as such to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel: two hundred fifty dollars (\$250).

f. Restaurant license issued to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant: two hundred fifty dollars (\$250).

3. *Transfer Fees.* Licenses may be transferred to another licensee only on approval from the Community Council

as stated in Chapter 14.204 of this Ordinance.

a. Distiller or Brewer's license: five hundred dollars (\$500).

b. Vintner's license: three hundred dollars (\$300).

c. Wholesaler's license to sell all spirituous liquors: two hundred dollars (\$200).

d. On-sale retailer's license to sell all spirituous liquors by individual portions and in the original containers: three hundred dollars (\$300).

e. Off-sale retailer's license to sell all spirituous liquors: one hundred dollars (\$100).

f. *Site Transfer Fee.* Persons or business organizations who wish to retain their license but transfer their business to another site may do so after paying a site transfer fee of twenty-five dollars (\$25).

4. *Seasonal Business.* Where the business of an on-sale retail licensee is seasonal, extending for periods of less than six (6) months in a calendar year, the licensee may designate the periods of his operation and be granted a license for a period not to exceed six (6) months. The fees for any license granted pursuant to this subsection shall be one-half of the fees listed in subsections 14.302(1), (2), or (3).

5. *Licenses Issued After July 1.* Any application, renewal, or transfer fee levied under this Ordinance after July 1 shall be reduced by one-half.

#### Chapter 4. Regulations

##### 14.401 Stills.

1. Every person who possesses or otherwise exercises control of a still or distilling apparatus shall register it with the Committee under the rules and regulations the Committee may prescribe.

2. Every still or distilling apparatus not registered, and any mash, wort, or wash, for distillation or for the production of spirits or alcohol, and all finished products, together with all personal property in the possession or custody of, or under the control of any person which may be used in the manufacture or transportation of spirituous liquors which is found in the building, yard, or enclosure connected with the building in which the unregistered still or distilling apparatus is located, shall be forfeited in the Community.

3. The still, distilling apparatus, wort, wash or finished products shall forthwith be destroyed by an agency of the Committee, or other peace officer, and all personal property forfeited to the Committee shall be sold at public auction to the highest bidder for cash on five days' notice. Notice shall be posted

at the Gila River Indian Community Court and at the District Service Center in the District where the still and associated personal property were seized. All publication and sale expenses shall be deducted from the sale proceeds and the balance will be paid into the Gila River Indian Community general fund.

14.402 *Close Of Business.* No on-sale licensee shall lock, or permit to be locked, any entrance of his licensed establishment until all persons other than the licensee and his employees have left the premises.

14.403 *Change Of Business Or Trade Name.* No licensee shall change the name of his licensed business without first obtaining written permission from the Committee. No licensee shall use a name for his licensed business until that name has been approved in writing by the Committee. The licensee shall submit his license for change within fifteen (15) days of the written approval of the business or trade name change.

##### 14.404 Containers.

1. No liquor bottle or other container authorized by the laws of the United States or any agency thereof shall be reused for the packaging of distilled spirits, nor shall the original contents, or any portion of such original contents, remaining in a liquor bottle or other such authorized container, be increased by the addition of any substance.

2. No licensee shall reuse, sell, or give away empty spirituous liquor bottles contrary to federal laws or regulations.

14.405 *Recordkeeping.* All licensees shall retain, for a period of not less than two (2) years, all invoices, records, bills, and other papers and documents relating to the purchase, sale, and delivery of alcoholic beverages. Such records and papers shall be kept in such condition as to be easily accessible to the Committee or authorized Community employee for audit or examination.

14.406 *Emergency Closing of Premises.* A licensed place of business may be required to cease its operation and stop all sales of alcoholic beverages or allow any person on the premises, with the exception of peace officers, the licensee and his employees, during the time at which it appears to the Committee or any peace officer that violence might reasonably occur.

##### 14.407 Persons With Legal Or Equitable Interest; Disclosure; Process.

1. All persons having a legal or equitable interest in a spirituous liquor license shall file with the Committee a statement of such interest on a form prescribed and furnished by the Committee. Notice of termination of such interest shall be filed in writing by

the interest holder upon final determination of the interest. Interest holders shall immediately file amended statements presently on file.

2. The Committee may periodically, by notice to the holders of interests filed under this regulation, require those interest holders to verify in writing to the Committee that the statement presently on file is correct and accurate and, if not, such interest holder shall immediately file an amended statement or termination notice. If no response is received by the Committee within thirty (30) days of the mailing of such notice, the interest shall be deemed terminated.

3. All persons having filed statements of interest in accordance with this regulation and the statute shall be given notice of all matters and/or action affecting or regarding the spirituous liquor license in which they have an interest. Notice shall be effected by mailing a copy thereof by registered or certified mail in a sealed envelope with postage prepaid and addressed to such person as his address as shown by the statement on file with the Committee. Service of such notice shall be complete when deposited in the United States mail.

4. All interest holders who are entitled to receive notice as provided hereinabove shall have the right to appear and participate in person and through counsel in any hearing held before the Committee affecting the subject spirituous liquor license as his interests may appear.

5. The statement of legal or equitable interest shall allow the person filing said statement to participate in the proceedings and shall not in any manner bind the Community concerning the matter under consideration.

##### 14.408 Unlawful Acts. It is unlawful:

1. For any person, whether as principal or agent, clerk or employee, whether for himself, or for any other person, or for any body corporate, or as officer of any corporation, or as a member of any firm or co-partnership or otherwise to buy for resale, sell or deal in spirituous liquors on and within the exterior boundaries of the Gila River Indian Reservation, Arizona, without first obtaining all necessary Federal and State licenses including, but not restricted to a Federal license to trade with the Indians issued pursuant to Title 25, Code of Federal Regulations, and a valid license issued by the Gila River Indian Community.

2. For a person to sell or deal in alcohol for beverage purposes without first complying with the provisions of this Ordinance.

3. For a distiller, vintner, brewer or wholesaler to sell, dispose of or give spirituous liquor to any persons other than a licensee, except in sampling wares as may be necessary in the ordinary course of business.

4. For a distiller, vintner or brewer to require a wholesaler to offer or grant a discount to a retailer, unless the discount has also been offered and granted to the wholesaler by the distiller, vintner or brewer.

5. For a distiller, vintner or brewer to use a vehicle for trucking or transportation of spirituous liquors unless there is affixed to both sides of the vehicle a sign showing the name and address of the licensee and the type and number of his license in letters not less than three and one-half inches in height.

6. For a person to take or solicit orders for spirituous liquors unless he is a registered salesman or solicitor of a licensed wholesaler or a registered salesman or solicitor of distillery, vintner, brewery, importer or broker.

7. For any retail licensee to purchase spirituous liquor from any person other than a registered solicitor or salesman of a wholesaler licensed by the State of Arizona and the Community.

8. For a retailer to acquire an interest in property owned, occupied or used by a wholesaler in his business, or in a license with respect to the premises of the wholesaler.

9. Except as provided in paragraphs 10 and 11 of this section, for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age or for a person under the legal drinking age to buy, receive, have in the person's possession or consume spirituous liquor. This paragraph shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen (16) years of age to check out, if supervised by a person on the premises who is at least nineteen (19) years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

10. For a licensee to employ a person under the age of nineteen (19) years to manufacture, sell or dispose of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under the age of nineteen (19) years who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises.

11. For an on-sale retailer to employ a person under the age of nineteen (19) years in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under the age of nineteen (19) years who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises.

12. For a licensee, when engaged in waiting on or serving customers, to consume spirituous liquor or remain on or about the premises while in an intoxicated or disorderly condition.

13. For an employee of a licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for himself or consume spirituous liquor.

14. For a licensee or other person to serve, sell or furnish spirituous liquor to an intoxicated or disorderly person, or for a licensee or employee of the licensee to allow or permit an intoxicated or disorderly person to come into or remain in or about the premises.

15. For an on-sale or off-sale retailer or an employee of such retailer to sell, dispose of, deliver or give spirituous liquor to a person between the hours of 2 a.m. and 6 a.m. on weekdays, and 2 a.m. and 10 a.m. on Sundays.

16. For a licensee or employee to knowingly permit any person on or about the licensed premises to give or furnish any spirituous liquor to any person under the age of twenty-one (21) or knowingly permit any person under the age of twenty-one (21) to have in the person's possession spirituous liquor on the licensed premises.

17. For an on-sale retailer or an employee of such retailer to allow a person to consume or possess spirituous liquors on the premises between the hours of 2:30 a.m. and 6 a.m. on weekdays, and 2:30 a.m. and 10 a.m. on Sundays.

18. For an on-sale retail licensee to employ a person for the purpose of soliciting the purchase of spirituous liquors by patrons of the establishment for themselves, on a percentage basis or otherwise, and no licensee shall serve employees or allow a patron of the establishment to give spirituous liquor to, or to purchase liquor for or drink liquor with, any employee.

19. For an on-sale retailer to sell spirituous liquors except in the original container, to permit spirituous liquor to be consumed on the premises, or to sell spirituous liquor in a container having a capacity of less than eight ounces, or for an on-sale retailer to sell spirituous

liquor for consumption off the premises in the container having a capacity of less than eight ounces.

20. For a person to consume spirituous liquor from a broken package in a public place, thoroughfare or gathering, and the license of a licensee permitting a violation of this paragraph on the premises shall be subject to revocation. This paragraph shall not apply to sale of spirituous liquors on the premises of and by an on-sale retail licensee.

21. For a person to have possession of or to transfer spirituous liquor which is manufactured in a distillery, winery, brewery, or rectifying plant contrary to the laws of the United States and any property used in transporting such spirituous liquor shall be forfeited to the Community and shall be seized and disposed of by the Gila River Indian Community Police Department.

22. For a licensee or employee to fail or refuse to make the premises or records available for inspection and examination as provided in this Ordinance or to comply with a lawful subpoena issued either by the State of Arizona or the Gila River Indian Community under state of Community law.

#### *Chapter 5. Violations, Appeals, Effect of Suspension or Revocation of State License, Effective Date*

14.501 *Violations.* Any person or licensee who is fined under this Ordinance or has their license suspended or revoked may appeal such action to the Committee. Upon receipt of said appeal, the Committee shall set a date to hear the appeal. The Committee shall hear such evidence as the appellant, Community, and other interested parties may offer, and render its decision at the conclusion of such hearing.

1. *Unlawful Acts.* Any person or licensee who violates any enumerated provision of Chapter 14.408 shall be fined Five Hundred Dollars (\$500). In the event of multiple violations, the Committee may levy one fine per violation or may levy a single five hundred dollar (\$500) fine.

2. *Licensees.* The Committee may revoke the license of any licensee who violates any provision of this ordinance.

14.502 *Appeal.* The Committee's decision may be appealed to the Gila River Indian Community Court, provided that the appeal is duly filed within twenty working (20) days of the Committee's decision.

#### *14.503 Effect of Suspension or Revocation Of State License.*

1. All licensees shall comply with the laws of the United States and the State

of Arizona governing the manufacture and sale of spirituous liquor.

2. Any suspension or revocation of an Arizona-issued liquor license shall automatically take effect against a licensee's Gila River Indian Community-issued license.

3. Notwithstanding the appeal process described in Chapters 14.501 and 14.502, no appeal shall be permitted for any Community-issued license suspended or revoked under Chapter 14.503(2).

14.504 *Effective Date*. In accordance with 18 U.S.C. 1161 (2005), this Ordinance shall be effective on the date upon which, after having been certified by the Secretary of the Interior, it is published in the **Federal Register**.

[FR Doc. 05-22357 Filed 11-8-05; 8:45 am]

BILLING CODE 4310-4J-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA 160-1220-PG]

#### Call for Nominations for Carrizo Plain National Monument Advisory Committee

**AGENCY:** Bureau of Land Management, (BLM), Interior.

**ACTION:** Call for nominations for the Carrizo Plain National Monument Advisory Committee under Section 309 of the Federal Land Policy and Management Act (Pub. L. 94-579 and 43 CFR 1784 4-1).

**SUMMARY:** The purpose of this notice is to request public nominations for the Carrizo Plain National Monument Resource Advisory Committee. The advisory committee has nine member terms expiring in December of this year. The terms of the council members are three years long. Meetings are usually held quarterly, however additional meetings may be called if necessary. The committee advises the Secretary of the Interior and the Bureau of Land Management on resource management issues associated with the Carrizo Plain National Monument. BLM will consider public nominations for 30 days after the publication date of this notice.

**DATES:** Submit a completed nomination form and nomination letters to the address listed below by December 9, 2005.

**ADDRESSES:** Send nominations to: Field Manager, Bakersfield Field Office, Bureau of Land Management, 3801 Pegasus Avenue, Bakersfield, California 93308.

**FOR FURTHER INFORMATION CONTACT:** Ron Huntsinger, Bakersfield Field Office manager, (661) 391-6000.

**SUPPLEMENTARY INFORMATION:** Any individual or organization may nominate one or more persons to serve on the Carrizo Plain National Monument Advisory Committee. Individuals may nominate themselves for committee membership. Nomination forms can be obtained from the Bakersfield Field Office, Bureau of Land Management (see **ADDRESS** above). To make a nomination, you must submit a completed nomination form, letters of reference from the interests or organizations the nominee intends to represent, as well as any other information that speaks to the nominee's qualifications, to the Bakersfield Field Office. You may make nominations for the following categories of interest:

(1) A member of, or nominated by, the San Luis Obispo Board of Supervisors.

(2) A member of, or nominated by, the Kern County Board of Supervisors.

(3) A member of, or nominated by, the Carrizo Native American Advisory Council.

(4) A member of, or nominated by, the Central California Resource Advisory Council.

(5) A member representing individuals or companies authorized to graze livestock within the National Monument.

(6) Four members with recognized backgrounds reflecting:

(a) The purposes for which the monument was established and

(b) The interests of other stakeholders, including the general public, that are affected by or interested in the planning and management of the National Monument.

The specific category the nominee would like to represent should be identified in the letter of nomination and in the nomination form. The Bakersfield Field Office will collect the nomination forms and letters of reference and, in the case of categories 1-4 (above) distribute them to the officials responsible for submitting nominations. The Bureau of Land Management will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

The purpose of the Carrizo Plain National Monument Advisory Committee is to advise the Bureau of Land Management on the management of the monument. Each member will be a person who, as a result of training and experience, has knowledge or special

expertise which qualifies him or her to provide advice from among the categories of interest listed above.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for government employees.

Dated: September 27, 2005.

**Janet Bedrosian,**

*Acting State Director, California BLM.*

[FR Doc. 05-22347 Filed 11-8-05; 8:45 am]

BILLING CODE 4310-84-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO-260-09-1060-00-24 1A]

#### Correction to Notice of Call for Nominations for the Wild Horse and Burro Advisory Board

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Corrections to Notice of Call for Nominations for the Wild Horse and Burro Advisory Board. This notice was previously published in the **Federal Register**: Vol. 70, No. 193/Tuesday, October 6, 2005.

**SUMMARY:** The **Federal Register** Notice has an incorrect date for nominations to be submitted to the National Wild Horse and Burro Advisory Board. The corrected notice extends the date to November 30, 2005. The nominations should be submitted to the National Wild Horse and Burro Program, Bureau of Land Management, Department of Interior, P.O. Box 12000, Reno, Nevada 89520-0006, Attn: Ramona DeLorme: fax (775) 861-6711.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Rawson, Group Manager, Wild Horse and Burro Group, (202) 452-0379. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. DeLorme* at any time by calling the Federal Information Relay Service at 1 (800) 877-8339.

Dated: October 25, 2005.

**Thomas H. Dyer,**

*Deputy Assistant Director, Renewable Resources and Planning.*

[FR Doc. 05-22187 Filed 11-8-05; 8:45 am]

BILLING CODE 4310-84-P



**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[CA-339-04-1610-DR]****Establishment of Interim Final Supplementary Rules on Public Lands in the Headwaters Forest Reserve Managed By the Arcata Field Office, California****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Establishment of Interim Final Supplementary Rules with requests for comments.

**SUMMARY:** In accordance with the approved Headwaters Forest Reserve Resource Management Plan, the Bureau of Land Management (BLM), California State Office, is issuing interim final supplementary rules and requesting comments. These interim final supplementary rules will apply to the public lands within the Headwaters Forest Reserve, Arcata Field Office, Humboldt County, California, and will be effective upon publication and remain in effect until publication of a final supplementary rule. BLM has determined that these rules are needed to protect the area's natural resources and provide for the health and safety of the public and neighboring residents. These rules do not propose or implement any land use limitations or restrictions other than those included within BLM's decisions in the Headwaters Forest Reserve Approved RMP, or allowed for by existing law or regulation.

**DATES:** The interim final supplementary rules are effective November 9, 2005. We invite comments until January 9, 2006.

**ADDRESSES:** Mail or hand deliver all comments concerning the interim final supplementary rules to the Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

**FOR FURTHER INFORMATION CONTACT:** Robert Wick, Planning and Environmental Coordinator, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95519, 707-825-2321. E-mail: [rwick@ca.blm.gov](mailto:rwick@ca.blm.gov).

**SUPPLEMENTARY INFORMATION****I. Public Comment Procedures**

Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and should explain the reason for any recommended change. The Record of Decision for the Headwaters Forest Reserve Resource Management Plan was

signed on June 29, 2004, and represents the final decision of the Bureau of Land Management Director regarding management of Reserve lands. Therefore, comments requesting changes to the management plan are outside the scope of this comment period. Where possible, comments should reference the specific section or paragraph of the rule which the comment is addressing. BLM need not consider or include in the Administrative Record for the final rule; (a) Comments that BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or; (b) comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521, during regular business hours (7:45 a.m. to 3:45 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

**II. Background**

The BLM is establishing these interim final supplementary rules under the authority of 43 CFR 8365.1-6, which allows BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations. Upon completion, the rules will be available for inspection in the Arcata Field Office; the rules will be posted at the Arcata Field Office; and they will be published in a newspaper of general circulation in the affected vicinity.

BLM is establishing these interim final supplementary rules for the Headwaters Forest Reserve, designated by Congress in the 1998 Interior

Appropriations Bill (Pub. L. 105-83). The Headwaters Forest Reserve is located approximately 6 miles southeast of Eureka, Humboldt County, California, within T.3N., R.1E., Secs. 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29; T.4N., R.1E., Sec. 31; T.4N., R.1W., Secs. 35, 36, Humboldt Meridian. The interim final supplementary rules will allow for implementation of the resource protection and public use decisions in the Headwaters Forest Reserve Resource Management Plan/Final EIS (RMP). The RMP was prepared as a requirement of the Congressional legislation and with full public participation and multi-agency collaboration.

The BLM finds good cause to publish these supplementary rules on an interim final basis, effective the date of publication, for the protection of the reserve's unique and sensitive ecosystem and to provide for public health and safety. The Headwaters ecosystem provides critical habitat for several Federally-listed threatened and endangered species that are sensitive to impacts associated with public use. These species include the northern spotted owl, marbled murrelet, and several salmonids. Lands adjoining the Reserve include an area of private residences and large blocks of active industrial timberlands with extensive heavy equipment use. The rules are necessary for the safety of both public land visitors and these adjoining landowners.

The interim final supplementary rules will facilitate the implementation of the management actions contained in the RMP and ROD for the Headwaters Forest Reserve completed in 2003 and 2004, respectively. Throughout development of the RMP, BLM strived to create an open planning process. This planning process was designed to engage and involve public interest groups from the local to the national level, concerned individuals, Federal and state resource agencies, and local and Tribal governments. The plan was completed in cooperation with the California Department of Fish and Game (DF&G) which manages an easement on Reserve lands for the state of California. Therefore the plan also followed all public and agency involvement requirements of the California Environmental Quality Act (CEQA) and the associated Environmental Impact Report (EIR) process. DF&G has also designated the Reserve as a state Ecological Reserve. All interim final rules in this notice are consistent with state policies and laws guiding public use of ecological reserves.



The following is a summary of the collaborative planning process which has led to the Record of Decision.

**Public Scoping:** A public scoping process for preparation of the RMP and related EIS/EIR was conducted from May 18, 2000 to August 18, 2000. Public and agency input was solicited through three public meetings (in Eureka, San Francisco, and Sacramento), use of a Web site offering information and electronic comment input, establishment of dedicated telephone lines for information requests and comment input, and provisions for submission of written comments by mail. BLM summarized scoping comments, and prepared a scoping report in October 2000.

**Draft RMP Development:** The BLM Arcata Field Office developed a draft RMP, based on the scoping comments and concerns from public resource agencies and local Tribal governments. Planning updates were mailed to persons and organizations that had participated in the scoping process.

**Draft RMP/EIS/EIR:** A public/agency review period for the draft plan/EIS/EIR was conducted according to requirements of NEPA and CEQA. A 90-day review period was established via publishing a notice of availability of a draft EIS in the **Federal Register** on May 31, 2002, publishing a notice in newspapers of general circulation and mailing a notice to all persons and organizations on the RMP mailing list.

The public review period extended from May 31, 2002, to September 6, 2002. During this period, public meetings were held in Eureka (July 16, 2002), Sacramento (July 24, 2002), and San Francisco (July 25, 2002). Court reporters were present at all of the meetings and verbatim transcripts were prepared. Several means of submitting comments were provided: Verbal comments at the public meetings, telephone voice mail center, e-mails, or written letters. The draft RMP comment period resulted in comments from over 6,400 parties.

**Proposed RMP and Final EIS/EIR:** The Proposed RMP and Final EIS/EIR were released on October 7, 2003, and a Notice of Availability was published in the **Federal Register** on October 10, 2003. The document was distributed by mail to a mailing list that had been updated to include persons and organizations that previously commented. A transmittal letter from the Arcata Field Manager described the process for filing protests to the plan within a 30-day period. The protest filing deadline was November 10, 2003. The plan decisions relating to the interim final supplemental rules were

analyzed in the final EIS and the rules were published as an appendix in the Proposed RMP.

**Consistency Requirements:** In accordance with planning regulations at 43 Code of Federal Regulations 1610.3-2(e), the Proposed RMP/Final EIS/EIR was sent to the Governor of California on October 6, 2003, for a 60-day review of consistency with state or local plans, policies, and programs. In a letter dated December 6, 2003, the Governor's Office of Planning and Research (OPR) determined that the Proposed RMP was not inconsistent with any State or local plans, policies or programs.

**Plan Protest Resolution:** The BLM Director has addressed and resolved all protests concerning adoption of the approved RMP. According to BLM regulations (43 CFR 1610.5-2(b)), the decision of the BLM Director on plan protests is the final decision of the Department of the Interior.

### III. Procedural Matters

#### *Executive Order 12866, Regulatory Planning and Review*

These interim final supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These interim final supplementary rules will not have an annual effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These interim final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The interim final supplementary rules only impose rules of conduct on recreational users of public lands in the Headwaters Forest Reserve and will have a positive effect on public health and safety.

#### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The interim final supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not in any way apply to private property or affect private land rights. Several of the rules

will serve to reduce impacts of public land users on adjoining private properties, so will serve to benefit these landowners. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

#### *Executive Order 13132, Federalism*

The interim final supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The planning process and EIS/EIR that determined the need for these rules was conducted jointly by the BLM and the State of California. The interim final supplementary rules affect land only in one state, California, and do not address jurisdictional issues involving state government.

#### *Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that these interim final supplementary rules would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have found that these interim final supplementary rules do not include policies that have Tribal implications. The BLM consulted during the RMP process with the three Tribes whose historical territories include the reserve. All three Tribes concurred with the decisions in the RMP. The interim final supplementary rules do not affect lands held for the benefit of Indians, Aleuts or Eskimos.

#### *National Environmental Policy Act*

These interim final supplementary rules in and of themselves do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). However, they are a component of a larger plan (Resource Management Plan) that constitutes a major Federal action. BLM has prepared a draft environmental impact statement/final environmental impact statement (DEIS/FEIS) on the Resource Management Plan that analyzes each decision corresponding to

the interim final supplementary rules. In addition to this analysis, the interim final supplemental rules were directly published in the final EIS. These documents are on file and available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The Record of Decision has also been completed and is also on file at the specified address.

#### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if supplementary rules would have a significant economic impact, on a substantial number of small entities. These interim final supplementary rules only regulate behavior of recreational visitors to the Headwaters Forest Reserve, and will not affect business or commercial use of public lands, or use by small organizations or small governmental jurisdictions. Therefore, BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

These interim final supplementary rules are not a “major rule” as defined at 5 U.S.C. 804(2). They merely contain rules of conduct for recreational use of certain public lands and have no effect on business, commercial or industrial use of public lands.

#### *Unfunded Mandates Reform Act*

These interim final supplementary rules do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or the private sector of more than \$100 million per year; nor do they have a significant or unique effect on small governments. These interim final supplemental rules only apply to public land recreation users and do not require anything of state, local or Tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

#### *Paperwork Reduction Act*

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must

approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### *Author*

The principal authors of these interim final supplementary rules are Dan Averill, Headwaters Forest Reserve Manager, and Bob Wick, Planning and Environmental Coordinator, Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 CFR 8365.1–6, the California State Director, Bureau of Land Management hereby issues interim final supplementary rules, effective upon publication, for public lands managed by the BLM in the Headwaters Forest Reserve, to read as follows:

#### *Definitions*

**Headwaters Forest Reserve**—Encompasses all public lands and associated access easements held by BLM within T.3N., R.1E., Secs. 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29; T.4N., R.1E., Sec. 31; T.4N., R.1W., Secs. 35, 36, Humboldt Meridian. Public access easement routes will be clearly identified by on-site signing and descriptive information. All references to the “Reserve” in this notice are referring to the Headwaters Forest Reserve as defined here.

**Camping**: The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

**Guided BLM Hike**—A hike conducted by BLM employee or volunteer. Guided hikes may be conducted by other representatives under written permission of the BLM authorized officer.

**Designated Trail**: A trail developed, maintained, and explicitly identified for public use by the BLM. All designated trails will be identified by a combination of trailhead maps and on-site signing listing allowable uses.

**Firearm or other projectile shooting device**—Includes all firearms, air rifles, pellet and BB guns, spring guns, bows and arrows, slings, paint ball markers, other instruments that can propel a projectile, or any instrument that can be loaded with and fire blank cartridges.

#### *Interim Final Supplementary Rules for the Headwaters Forest Reserve*

The following rules apply to all visitors to the Headwaters Forest Reserve. Employees and agents of the

BLM will be exempt from these rules during performance of specific official duties as authorized by the Reserve Manager.

1. The northern portion of the Reserve, accessed via the Elk River Road is open for day use only, from sunrise to sunset.

2. The southern portion of the Reserve, accessed via the Felt Springs Road, is open only for guided BLM hikes. Hikes will normally be conducted from May 15 through November 15, based on suitable dry weather conditions. All other times, public access to the southern end of the Reserve is not allowed.

3. Dogs are allowed on the Elk River Corridor Trail and must be under voice control of the owner/possessor at all times, or on a leash. Pets are otherwise not allowed within the Reserve.

4. Pedestrian use is allowed only on designated trails.

5. Bicycles are allowed on the Elk River Corridor Trail to the posted end point approximately 3 miles from the parking area. Bicycles must stay on the designated trail at all times.

6. Motorized vehicles are not allowed.

7. Equestrian use is not allowed.

8. Discharge or use of firearms or other projectile shooting devices is not allowed.

9. Hunting and fishing are not allowed.

10. Camping is not allowed.

11. Swimming or wading of humans or dogs in creeks or rivers is not allowed.

12. Campfires, charcoal grills, cookstoves, fireworks or other incendiary devices capable of producing open flames, sparks or embers are not allowed.

13. Vegetation gathering is not allowed.

#### *Penalties*

Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a), and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

#### **Mike Pool,**

*State Director.*

[FR Doc. 05–22348 Filed 11–8–05; 8:45 am]

**BILLING CODE 4310–40–P**

**DEPARTMENT OF THE INTERIOR****Meeting of the California Desert District Advisory Council**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, January 27, 2006, from 7:30 a.m. to 5 p.m., and meet in formal session on Saturday, January 28 from 8 a.m. to 4 p.m. at the La Casa Del Zorro Desert Resort, located at 3845 Yaqui Pass Road in Borrego Springs, California.

The Council and interested members of the public will depart from the resort for a field tour at 7:30 a.m. The public is welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch. Tour stops and presentations will be announced via a public letter and news release at a later date.

**SUPPLEMENTARY INFORMATION:** All Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Meeting agenda topics with timeframes will be announced via a public letter and news release at a later date. While the Saturday meeting is tentatively scheduled from 8 a.m. to 4 p.m., the meeting could conclude prior to 4 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Doran Sanchez, BLM California Desert

District Public Affairs Specialist (951) 697-5220.

Dated: November 2, 2005.

**Robert D. Roudabush,**  
*Acting District Manager.*

[FR Doc. 05-22346 Filed 11-8-05; 8:45 am]

**BILLING CODE 4310-40-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

**[CO-200-1220-PA]**

**Notice of Proposed Supplementary Rules for Public Lands in Park County, CO: Guffey Gorge/Guffey Gulch**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed supplementary rules.

**SUMMARY:** The Bureau of Land Management (BLM)'s Royal Gorge Field Office is proposing supplementary rules to regulate conduct on specific public lands within Park County, Colorado. The rules apply to the public lands called Guffey Gorge, also known as Guffey Gulch. BLM has determined these rules necessary to protect the area's natural resources and to provide for public health and safe public recreation.

**DATES:** You should submit your comments by December 9, 2005. In developing final supplementary rules, BLM need not consider comments postmarked, received in person or by electronic mail after this date.

**ADDRESSES:** Mail, personal, or messenger delivery: Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Cañon City, Colorado 81212. Internet e-mail: [rgfo\\_comments@blm.gov](mailto:rgfo_comments@blm.gov) (Include "Attn: Guffey Gorge")

**FOR FURTHER INFORMATION CONTACT:** Roy L. Masinton, Field Manager, or Leah Quesenberry, Outdoor Recreation Planner, Royal Gorge Field Office, at the address listed above or by telephone at 719-269-8500. Individuals who use a telecommunications device for the deaf (TDD) may contact them individually through the Federal Information Relay Service at 1-800/877-8339, 24 hours a day, seven days a week.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Supplementary Rules
- IV. Procedural Matters

**I. Public Comment Procedures**

Please submit your comments on issues related to the proposed

supplementary rules, in writing, according to the **ADDRESSES** section, above. Comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM need not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4 p.m., Monday through Friday, except on Federal holidays). Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

**II. Background**

Guffey Gorge/Guffey Gulch is a small tract (80 acres) of public land in Park County, Colorado. It is surrounded by private land with Park County Road 102 providing legal public access. Until five years ago, recreational use of this area was light, and the area was used primarily by local residents for picnicking, hiking, and swimming. Recreational use of the area has increased significantly over the past five years—resulting in resource damage, user conflicts, and safety hazards for visitors and surrounding private landowners.

**III. Discussion of Supplementary Rules**

These supplementary rules apply to approximately 80 acres of public lands known as Guffey Gorge, identified as follows:

**Park County, Colorado, Sixth Principal Meridian**

T. 15 S., R. 71 W.

Section 4: SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 9: NE $\frac{1}{4}$ NE $\frac{1}{4}$

These proposed supplementary rules are needed to address significant public

safety concerns and resource protection issues resulting from increased public use and unsafe user conduct on public lands known as Guffey Gorge. The supplementary rules are proposed under the authority of 43 CFR 8365.1–6, 8341.1, and 8364.1. This notice, with a detailed map, will be posted at the Royal Gorge Field Office.

#### IV. Procedural Matters

##### *Executive Order 12866, Regulatory Planning and Review*

These proposed supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These proposed supplementary rules will not have an annual effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. They merely establish rules of conduct for public use of a limited area of public lands in order to protect natural resources and public health and safety.

##### *Clarity of the Supplementary Rules*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as: (1) Are the requirements in the proposed supplementary rules clearly stated? (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity? (3) Is the description of the proposed supplementary rules in the “Discussion of Supplementary Rules” section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to either of the addresses specified in the **ADDRESSES** section.

##### *National Environmental Policy Act*

BLM has prepared an environmental assessment (EA) and has found that these proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules would merely establish rules of conduct for public use of a limited area of public lands in order to protect natural resources and public health and safety. Although some uses, such as camping, would be prohibited in the area, the area would still be open to other recreation uses. A detailed statement under NEPA is not required. BLM has placed the EA and Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above.

##### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules should have little effect on business, organizational, or governmental entities of whatever size. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, human health, and safety. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

These proposed supplementary rules are not a “major rule” as defined at 5 U.S.C. 804(2). They would not result in an annual effect on the economy of \$100 million or more, in a major increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic and export markets. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, human health, and safety.

##### *Unfunded Mandates Reform Act*

These proposed supplementary rules do not impose an unfunded mandate on state, local or tribal governments, in the aggregate, or the private sector, of more than \$100 million in any one year; nor do these proposed supplementary rules have a significant or unique effect on small governments. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, human health, and safety. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act at 2 U.S.C. 1532.

##### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The proposed supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The reasonable restrictions that would be imposed by these supplementary rules would not deprive anyone of property or interfere with anyone's property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

##### *Executive Order 13132, Federalism*

The proposed supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The shooting restrictions in the supplementary rules do not apply to hunting with a state hunting license. Therefore, in accordance with Executive Order 13132, BLM has determined that the proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

##### *Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary

rules would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b) (2) of the Order are met.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have found that these proposed supplementary rules do not contain policies that have tribal implications. As such, no duties under Executive Order 13175 are required.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211, BLM has determined that the proposed supplementary rules are not significant energy actions. The rules are not likely to have a significant adverse effect on energy supply, distribution or use, including any shortfall in supply or price increase, and should have no substantial effect on fuel consumption.

*Paperwork Reduction Act*

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*Author*

The principal author of these supplementary rules is Leah Quesenberry, Outdoor Recreation Planner, Royal Gorge Field Office, Bureau of Land Management.

*Supplementary Rules for Guffey Gorge*

The Royal Gorge Field Office, Colorado, issues these supplementary rules under the authority of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1740, and 43 CFR 8365.1–6. Enforcement authority for these supplementary rules on the public lands within the Guffey Gorge area is found in FLPMA, 43 U.S.C. 1733, and 43 CFR 8360.0–7.

These supplementary rules apply to approximately 80 acres of public lands known as Guffey Gorge, identified as follows:

**Park County, Colorado, Sixth Principal Meridian**

T. 15 S., R. 71 W.  
Section 4: SE $\frac{1}{4}$ SE $\frac{1}{4}$   
Section 9: NE $\frac{1}{4}$ NE $\frac{1}{4}$

**Rules**

Guffey Gorge is designated as a day-use only area with the following

supplementary rules that you must follow:

a. No person or persons shall enter or be upon these lands between the hours of sunset and sunrise.

b. No person or persons shall have any type of fire except in a mechanical stove or other appliance fueled by gas, and equipped with a valve that allows the operator to turn the flame on and off.

c. No person or persons shall bring or possess glass containers.

d. No person or persons shall possess or discharge any fireworks.

e. No person or persons shall discharge a firearm of any kind, including those used for target shooting or paintball. Licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife, are exempt from this rule.

f. All persons using these public lands shall keep the area free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment upon departure.

**Penalties**

Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a), and the Sentencing Reform Act of 1984, as amended, 18 U.S.C. 3571, if you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than \$100,000 or imprisoned for no more than 12 months, or both.

**Douglas M. Koza,**

*Acting State Director, Colorado State Office.*

[FR Doc. 05–22342 Filed 11–8–05; 8:45 am]

**BILLING CODE 4310-JB-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[CA–360–1430–EU; CACA 28302]**

**Notice of Realty Action:**

Classification of Public Land for Recreation and Public Purposes; Shasta County, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and or conveyance, under provisions of the Recreation and Public Purposes Act

approximately 60.87 acres of public land in Shasta County, California. Shasta Service Guild, a non-profit organization, proposes to use the land for a park and community center.

**DATES:** Interested persons may submit written comments to the Field Manager at the address shown below until December 27, 2005. The land will not be offered for lease or conveyance until after January 9, 2006.

**ADDRESSES:** Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, California 96002.

**FOR FURTHER INFORMATION CONTACT:** Ilene Emry, 530–224–2100 or by email to [iemry@ca.blm.gov](mailto:iemry@ca.blm.gov).

**SUPPLEMENTARY INFORMATION:** The following described public land in Shasta County, California has been examined and found suitable for classification for lease and/or conveyance under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) and is hereby classified accordingly:

**Mount Diablo Meridian, California**

T. 32 N., R. 5 W.,  
Sec. 30, lots 16 and 19, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
and N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 31, lot 29.

The area described contains 60.87 acres in Shasta County.

The Shasta Service Guild's goal is to preserve and interpret the history of Shasta County and especially the Shasta area. The 60.87 acres of public land has many historical features which will be incorporated into their plan of development along with many structures which include an old freight depot, blacksmith barn, church, school, and other such structures that may become available. The project will also include an area for their annual Art Fair and Fiddle Jamboree held in May each year. Part of their plan includes a full-service Community Center and offices which will also include bays for emergency vehicles such as an ambulance or fire truck, along with a fire training site to help in the training of area fire personnel.

The Shasta Service Guild is a non-profit organization that provides family support services, social services, and local community project assistance in Shasta County. A portion of the above described lands (encompassing approximately 3 acres within lot 19) were previously classified as suitable for lease, for landfill purposes, to the County of Shasta. These lands are no longer needed for this purpose and are hereby classified for lease and or conveyance to the Shasta Service Guild

as part of the above legal description. The subject lands were also segregated as of March 16, 2005 (CA 46843 F2), under provisions of the exchange regulations found at 43 CFR 2201.1–1. The March 16, 2005 segregation is hereby terminated for the lands described in this Notice. The lease and or conveyance, when issued, will be subject to the provisions of the Recreation and Public Purposes Act, and to all applicable regulations of the Secretary of the Interior, and would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. Initially, the lands would be leased and after substantial development of the parcel, may be purchased by the Shasta Service Guild at 50 percent of the appraised fair market value, as provided for by 43 CFR 2741.8(b) and established BLM procedures. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest (1993 Redding Resource Management Plan).

**Classification Comments:** Interested parties may submit comments involving the suitability of the land for a park and community center as described below. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments:** Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for Recreation and Public Purposes. All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words

“CONFIDENTIALITY REQUEST” in uppercase letters in order for BLM to comply with your request. Such request will be honored to the extent allowed by law. Comment contents will not be kept confidential. Any objections will be evaluated by the State Director, who may sustain, vacate, or modify this realty action.

On November 9, 2005, the subject lands will be segregated from all other appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, which ever occurs first. In the absence of timely objections, the classification of the lands described in this Notice will become effective January 9, 2006.

The lands will not be offered for lease/conveyance until after the classification becomes effective. (Authority: 43 CFR 2741.5)

Dated: September 2, 2005.

**Steven W. Anderson,**  
Field Manager.

[FR Doc. 05–22341 Filed 11–8–05; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA–360–1430–EU; CA SAC 067440]

### Notice of Realty Action; Classification of Public Land for Recreation and Public Purposes; Shasta County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and conveyance under provisions of the Recreation and Public Purposes Act, approximately 4.54 acres of public land in Shasta County, California. The County of Shasta proposes to use the land for waste transfer facility purposes. **DATES:** Interested persons may submit written comments to the BLM Field Manager at the address shown below until December 27, 2005. The land will not be offered for lease or conveyance until after January 9, 2006.

**ADDRESSES:** Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, California 96002.

**FOR FURTHER INFORMATION CONTACT:** Ilene Emry at the above address or at

530–224–2100 or by e-mail to [iemry@ca.blm.gov](mailto:iemry@ca.blm.gov).

**SUPPLEMENTARY INFORMATION:** The following described public land in Shasta County, California has been examined and found suitable for classification for lease and conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) and is hereby classified accordingly:

### Mount Diablo Meridian, California

T. 32 N., R. 5 W., sec. 30, lot 18.

The area described contains approximately 4.54 acres in Shasta County.

A portion (approximately 2 acres within lot 18) of the public land described in this Notice was previously classified as suitable for lease for landfill purposes to Shasta County. The purpose of this Notice is to classify the land as suitable for lease and conveyance. The land will continue to be used as a waste transfer facility as authorized under CA S 067440.

The land would not be offered for lease or conveyance until at least 60 days after the date of publication of this Notice in the **Federal Register**. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior, and would contain the following reservations to the United States:

1. All minerals.
2. A right-of-way thereon for ditches and canals.

The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The subject land was also segregated as of March 16, 2005 (CA 46843 F2), under provisions of the exchange regulations found at 43 CFR 2201.1–1 (1982 Update of the Redding Management Framework Plan). The March 16, 2005 segregation is hereby terminated for the land described in this Notice. Upon publication of this Notice of Realty Action in the **Federal Register**, the subject land will be segregated from appropriation under any other public land law, including locations under the mining laws. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever occurs first. Detailed information concerning this action is available for review at the address listed above.

**Classification Comments:** Interested parties may submit comments involving the suitability of the land for a waste

transfer facility as described below. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for Recreation and Public Purposes.

All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words CONFIDENTIALITY REQUEST in uppercase letters in order for BLM to comply with your request. Such request will be honored to the extent allowed by law. Comment contents will not be kept confidential. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action.

On November 9, 2005, the subject land will be segregated from all other appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, which ever occurs first. In the absence of timely objections, the classification of the land described in this Notice will become effective January 9, 2006. The land will not be offered for lease or conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Dated: September 2, 2005.

**Steven W. Anderson,**

*Field Manager.*

[FR Doc. 05-22344 Filed 11-8-05; 8:45 am]

BILLING CODE 4310-40-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 15, 2005. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by November 25, 2005.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

#### Kentucky

##### Allen County

Satterfield, Edward and Julia, House, 10085 Bowling Green Rd., Scottsville, 05001304

##### Boone County

Blau, Nicholas S. and Gertrude E., House, (Boone County, Kentucky MPS) 15 Alta Vista Ave., Walton, 05001305  
Code House, (Boone County, Kentucky MPS) 965 Beaver Rd., Walton, 05001306  
Dinsmore, James, House (Boundary Increase), (Boone County, Kentucky MPS) 5655 Burlington Pike, Burlington, 05001307  
Mayhugh, John Clifton and Ann Catherine, House, (Boone County, Kentucky MPS) 133 N. Main St., Walton, 05001309  
McKim, W.F. and Florence, House, (Boone County, Kentucky MPS) 6031 S. Orient St., Burlington, 05001310  
Milburn, Frank S., Machine Shop, 5844 N. Orient St., Burlington, 05001311  
Rouse, Dr. Gladys, Office and House, (Boone County, Kentucky MPS) 221 Main St., Florence, 05001313  
Stephens, J.Q.A., House, (Boone County, Kentucky MPS) 5572 Rabbit Hash Rd., Union, 05001308  
Tomlin, John G., House, (Boone County, Kentucky MPS) 109 N. Main St., Walton, 05001314  
Rolsen, Henry and Agnes, House, (Boone County, Kentucky MPS) 3044 Dry Creek Rd., Constance, 05001312

##### Caldwell County

Tradewater River Dam and Riverside Park, Old Mill Dam Rd., Dawson Springs, 05001315

#### Harrison County

Handy Farm, US 62, Cynthiana, 05001316

#### Hart County

Pearce—Wheeler Farm, 640 Sims Cemetery Rd., Canmer, 05001317

#### Jefferson County

Ford Motor Company, Louisville Plant, 2500 S. 3rd St., Louisville, 05001318  
Simeon Lewis Rural Historic District, 5215 Bardstown Rd., Louisville, 05001319

#### Kenton County

Fifth District School, 1735 Homan Ave., Covington, 05001320  
St. Augustine Church Complex, 1839 Euclid Ave., Covington, 05001321

#### Mason County

Pogue House, 716 W. Second St., Maysville, 05001322

#### Massachusetts

##### Berkshire County

Pilgrim Memorial Church and Parish House, 249 Wahconah St., Pittsfield, 05001323

##### Middlesex County

Russian Cemetery, Patten Rd., Westford, 05001324

#### Missouri

##### Boone County

Stephens College, South Campus, 1200 E. Broadway, Columbia, 05001326

##### Gentry County

Insurance Building—Consumers Cooperative Association Building, 318-320 E. 10th St., Kansas City, 05001327

##### Jackson County

Nicholson, George E., House, 1028 W. 58th St., Kansas City, 05001325  
St. Louis Independent city Standard Adding Machine Building, 3701 Forest Park Blvd., St. Louis (Independent City), 05001328

##### Vernon County

Infirmery Building, Missouri State Hospital Number 3, 2095 N. Ash St., Nevada, 05001330

#### Nebraska

##### Lancaster County

Phi Kappa Tau Fraternity House, 5305 Huntington Ave., Lincoln, 05001329

##### New Jersey

##### Mercer County

Stockton Street Historic District, 126-136 Stockton St., 219-237 Rogers Ave., Highstown, 05001331

##### Middlesex County

Saint Peter the Apostle Church, 94 Somerset St., New Brunswick, 05001332

##### North Dakota

##### Walsh County

Ridge Trail Historic District, Address Restricted, Kensington, 05001333



**South Dakota****Clark County**

Clark Center Lutheran Church, E of jct. of  
421st Ave. and 168th St., Clark, 05001336

**Tennessee****Davidson County**

Mount Olivet Cemetery, 1101 Lebanon Pike,  
Nashville, 05001334

**Henry County**

Barrs Chapel C.M.E. Church, 5560 Briarpatch  
Lake Rd., Midway, 05001335

**Texas****Robertson County**

Franklin Carnegie Library, 315 East Decherd,  
Franklin, 05001337

**Wyoming****Sheridan County**

Dayton Community Hall, 410 Bridge St.,  
Dayton, 05001338

[FR Doc. 05-22290 Filed 11-8-05; 8:45 am]

**BILLING CODE 4312-51-U**

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places; Notification of Pending Nominations and Related Actions**

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 22, 2005. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by November 25, 2005.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**ARIZONA****Maricopa County**

North Central Avenue Streetscape Historic District, Central Ave., bet. Bethany Home Rd. and the Arizona Canal, Phoenix, 05001346

**FLORIDA****Martin County**

Tuckahoe, 1921 NE Indian River Dr., Jensen Beach, 05001339

**KANSAS****Atchison County**

Ebenezer Baptist Church, 826 Riley,  
Atchison, 05001343  
Schmitt House, 1110 W. Division St.,  
Atchinson, 05001342

**Shawnee County**

Security Benefit Association Hospital Building, 5800 SW 6th, 5 mi. NW on private road, Topeka, 05001341

**NEW YORK****Richmond County**

Staten Island Light, (Light Stations of the United States MPS) S side of Edinboro Rd., bet. 402 and 426 Rd., Richmond, 05001340

**VIRGINIA****Arlington County**

Arlington Forest Historic District, (Historic Residential Suburbs in the United States, 1830-1960 MPS) Bounded by Carlin Springs Rd., George Mason Dr., Henderson Rd., Aberdeen St., Columbus St., Granada, Galveston and 2nd, Arlington, 05001344

**Bedford County**

Bellevue Rural Historic District, Bellevue Rd., Forest, 05001345

**WASHINGTON****King County**

Dougherty, John and Kate, Farmstead, 26524 NE Cherry Valley Rd., Duvall, 05001353

**Kitsap County**

Camp Major Hopkins, 900 Park Ave. NE, Bainbridge Island, 05001351

**Pierce County**

Lynn, C.O., Co. Funeral Home, 717 Tacoma Ave. S, Tacoma, 05001352

**WEST VIRGINIA****Barbour County**

Wilmoth, Bernard E., House, 303 Dayton Blvd., Belington, 05001348

**Hardy County**

Lost River General Store, 6993 WV 259, Lost River, 05001349

**Preston County**

Downtown Rowlesburg Historic District, Buffalo St., Church St., Portions of Main St., Poplar St., Railroad Alley and Railroad St., Rowlesburg, 05001350

**Randolph County**

Gladys Presbyterian Church and Manse, Jct. of Randolph Ave. and 1st St., Gladys, 05001347

A request for a MOVE has been made for the following resources

**TEXAS****Denton County**

Gregory Road Bridge at Duck Creek (Historic Bridges of Texas MPS) Approx. 0.5 mi. W of Lois Rd., near the N Denton County line Sanger vicinity, 03001419

[FR Doc. 05-22291 Filed 11-8-05; 8:45 am]

**BILLING CODE 4312-51-P**

**DEPARTMENT OF JUSTICE****Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities: Extension of Currently Approved Collection; Comments Requested**

**ACTION:** 60-Day Notice of Information Collection Under Review: Methamphetamine Project, Final Update Report (FUR).

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until January 9, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Methamphetamine Project, Final Update Report (FUR).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law Enforcement Agencies or Government entities that are recipients of COPS Methamphetamine grants. Other: Universities and Private Non-Profit Agencies. Abstract: The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 annual responses from grantees. The estimated amount of time required for the average respondent to respond is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with the collection is 325 hours annually.

*If additional information is required contact:* Brenda Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 3, 2005.

**Brenda Dyer,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 05-22273 Filed 11-8-05; 8:45 am]

BILLING CODE 4410-AT-P

## DEPARTMENT OF JUSTICE

### Subcommittees of the Interagency ADR Working Group Steering Committee

**AGENCY:** Department of Justice.

**ACTION:** Notice soliciting public comment on three documents created by subcommittees of the Interagency ADR Working Group Steering Committee. The Steering Committee invites all interested individuals or organizations to submit comments on these documents for its consideration before they are posted in final form.

**SUMMARY:** This notice solicits public comment on three documents created by subcommittees of the Interagency ADR Working Group Steering Committee ("Steering Committee"), a group of federal subject matter experts. The first document, "Protecting the Confidentiality of Dispute Resolution Proceedings: A Guide for Federal Workplace ADR Program Administrators" ("Confidentiality Guide"), provides practical guidance to program administrators on the application of the confidentiality provisions of the Administrative Dispute Resolution Act of 1996 ("the ADR Act" 5 U.S.C. 574) to federal workplace dispute resolution programs. The other two documents ("Supplementation and Annotation documents"), consist of: (1) "A Guide for Federal Employee Mediators," a supplementation and annotation of the 2005 Model Standards of Conduct for Mediators issued by the American Arbitration Association ("AAA"), American Bar Association ("ABA"), and the Association for Conflict Resolution ("ACR"), for use by federal employee mediators; and (2) "A Guide for Federal Employee Ombuds," a supplementation and annotation of the Standards for the Establishment and Operations of Ombuds Offices issued on February 9, 2004 by the ABA, prepared by the Steering Committee in conjunction with the Coalition for Federal Ombudsmen ("CFO") for use by federal employee ombuds. Complete versions of each of the three documents can be found at <http://www.adr.gov/draftguides.html> or may be requested in hard copy from Hon. Richard C. Walters at 202-273-6747.

The Steering Committee invites all interested individuals or organizations to submit comments on these documents for its consideration before they are posted in final form.

**DATES:** All comments must be postmarked or emailed by 30 days from

the date of this notice, in order to receive consideration.

**ADDRESSES:** Please address all comments to Hon. Richard C. Walters, Administrative Judge, U.S. Department of Veterans Affairs Board of Contract Appeals (09), 810 Vermont Avenue, NW., Washington, DC 20420 and sent by e-mail to [Rich.Walters@va.gov](mailto:Rich.Walters@va.gov). Electronic transmission is preferred to ensure full distribution.

#### SUPPLEMENTARY INFORMATION:

*Authority:* The Administrative Dispute Resolution Act of 1996 (ADR Act), 5 U.S.C. Sections 571-584, requires each Federal agency to promote the use of ADR and calls for the establishment of an interagency committee to assist agencies in the use of ADR. Under this Act, a Presidential Memorandum, dated May 1, 1998, created the Interagency ADR Working Group, chaired by the Attorney General, to "facilitate, encourage, and provide coordination" for Federal agencies. In the Memorandum, the President charged the Working Group with assisting agencies with training in "how to use alternative means of dispute resolution". The three documents are designed to serve this goal.

*Executive Overview of the Confidentiality Guide:* This document, directed primarily toward managers of federal ADR programs, describes in practical, non-legal terms, the nature and limits of confidentiality in federal ADR proceedings. This document extends the guidance issued by the Federal ADR Council, Report on the Reasonable Expectations of Confidentiality Under the Administrative Dispute Resolution Act of 1996, 5 FR 83085, December 29, 2000 ("the 2000 ADR Guidance"), which may be found at <http://www.adr.gov/pdf/confid.pdf>, the IADRWG website. This guide is designed to be used in concert with the confidentiality provisions of the ADR Act as well as agency confidentiality policies and guidance.

This Confidentiality Guide contains information to assist the program manager in taking the steps necessary to assure that both internal and external neutrals understand the confidentiality provisions that apply to federal ADR programs and that parties are adequately informed of these provisions. While the Confidentiality Guide is aimed primarily at federal workplace disputes, it should be valuable to all dispute resolution professionals in the government and private sector.

Each chapter of the Confidentiality Guide includes a description and discussion of the issues, a legal analysis, and questions and answers related to

confidentiality as it pertains to an aspect of a federal workplace ADR program. The first chapter discusses issues applicable throughout a dispute resolution proceeding. This chapter covers the various stages—before, during, and after the actual dispute resolution session—of a dispute resolution proceeding. The remaining five chapters discuss particular issues regarding confidentiality—i.e., confidentiality agreements, record-keeping, program evaluation, access requests, and non-party participants.

*Executive Overview of the Guide for Federal Employee Mediators:* This document builds upon the 2005 Model Standards of Conduct for Mediators (“Model Standards”) issued by a joint committee of three major nationwide dispute resolution organizations, the AAA, ABA and ACR in order to establish for federal employee mediators ethical standards of conduct tailored to mediation practice within the federal government. It sets out the Model Standards in their entirety and accompanies those standards with Federal Guidance Notes that provide practical guidance for federal employee mediators. In particular, Federal Guidance Notes are appended to the Model Standards for “Impartiality,” “Conflicts of Interest,” “Confidentiality,” “Quality of the Process,” “Advertising and Solicitation,” and “Fees and Other Charges.”

*Executive Overview of the Guide for Federal Employee Ombuds:* This document builds upon the February 9, 2004 ABA Standards for the Establishment and Operations of Ombuds Offices (“Ombuds Standards”) issued by the ABA in order to establish for federal employee ombuds standards of conduct tailored to federal ombuds practice. It sets out the Ombuds Standards in their entirety and accompanies those standards with Federal Guidance Notes that provide practical guidance for federal employee ombuds. In particular, Federal Guidance Notes are appended to the Ombuds Standards for “Establishment and Operations,” “Independence, Impartiality and Confidentiality,” “Limitations on the Ombuds’ Authority,” “Notice,” and “Executive Ombuds.”

**Linda A. Cinciotta,**  
Director, Office of Dispute Resolution.  
[FR Doc. 05–22349 Filed 11–8–05; 8:45 am]  
BILLING CODE 4410–EC–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. California Olive Ranch*, (E.D. Cal.) 2:05–cv–02205–LKK–PAN, was lodged with the United States District Court for the Eastern District of California on November 2, 2005.

This proposed Consent Decree concerns a complaint filed by the United States against California Olive Ranch pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into the waters of the United States. The proposed Consent Decree resolves these allegations by requiring Defendant to mitigate the environmental impacts by purchasing mitigation credits at the Dove Ridge Conservation Bank and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Pamela S. Tonglao, Trial Attorney, United States Department of Justice, Environment and Natural Resources Division, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States v. California Olive Ranch*, (E.D. Cal.), 2:05–cv–02205–LKK–PAN, DJ #90–5–1–1–17457.

The proposed Consent Decree may be viewed at <http://www.usdoj.gov/enrd/open.html>.

**Stephen Samuels,**  
Assistant Chief, Environmental Defense  
Section, Environment & Natural Resources  
Division.

[FR Doc. 05–22361 Filed 11–8–05; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby give that on October 31, 2005, a proposed consent decree in *United States and the State of Indiana v. Town of Newburgh*, Civil Action No. 3:05–CV–199–RLY–WGH, was lodged with the United States District Court for the Southern District of Indiana.

In this action, the United States and the State of Indiana sought injunctive relief and civil penalties under section

309(b) and (d) of the Clean Water Act (“the Act”), 33 U.S.C. 1319(b) and (d), against the Town of Newburgh, Indiana, for violations of section 301 of the Act, 33 U.S.C. 1311, and the terms and conditions of the Town of Newburgh’s National Pollutant Discharge Elimination System (“NPDES”) permits at the Town of Newburgh’s wastewater treatment plant and throughout its sewer collection system. The Complaint alleges that the Town of Newburgh violated the Clean Water Act and its applicable NPDES permits by failing to comply with effluent limitations in its permits, discharging wastewater and raw sewage through unpermitted point sources, and failing to monitor specified parameters at the frequency required by its applicable NPDES permit.

The proposed Clean Water Act consent decree provides for injunctive relief consisting primarily of the Town of Newburgh’s implementation of a written capacity, management, operation, and maintenance (“CMOM”) plan for the sewer collection system that the Town of Newburgh owns or over which the Town of Newburgh has operational control; the approved CMOM plan is attached to the proposed consent decree as Appendix A. In addition, the proposed consent decree acknowledges that the Town of Newburgh has addressed alleged effluent limitation and sanitary sewer overflow violations of its NPDES permits through the completion of several construction projects: (a) the elimination of Outfall 011 to Cypress Creek; (b) the major upgrade of the wastewater treatment plant’s capacity from 2.3 million gallons per (“MGD”) to 4.6 MGD; (c) the provision of alternate power supply to the No. 5 (Triple Crown) and No. 8 (Old Plant) Lift Stations; (d) replacement of pumps and controls at the Old Plant Lift Station; (e) the construction of an new 18 inch gravity sewer connected to the Old Plant Lift Station; and (f) the closing and sealing of Outfall 009. In addition, the Town of Newburgh will pay a civil penalty of \$56,000 to resolve the claims in the Complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Indiana v. Town of Newburgh*, DOJ Ref. #90–5–1–1–06644.

The proposed consent decree may be examined at the office of the United

States Attorney for the Southern District of Indiana, 10 West Market, Suite 2100, Indianapolis, Indiana 46204, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the consent decrees may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$18.25 (25 cents per page reproduction costs), payable to the U.S. Treasury.

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 05-22362 Filed 11-8-05; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-259F]

### Controlled Substances: Final Revised Aggregate Production Quotas for 2005

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice of final aggregate production quotas for 2005.

**SUMMARY:** This notice establishes final 2005 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA). The DEA has taken into consideration comments received in response to a notice of the proposed revised aggregate production quotas for 2005 published August 5, 2005 (70 FR 45432).

**EFFECTIVE DATE:** November 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR

0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

The 2005 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2005 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances.

On August 5, 2005, a notice of the proposed revised 2005 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (70 FR 45432). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before August 26, 2005.

Nine companies commented on a total of 21 Schedules I and II controlled substances within the published comment period. One company questioned the aggregate production quota for marihuana. Eight companies proposed the aggregate production quotas for alfentanil, amphetamine, codeine (for conversion), difenoxin, dihydromorphine, diphenoxylate, fentanyl, hydrocodone, hydromorphone, levo-desoxyephedrine, methadone, methadone intermediate, methylphenidate, morphine (for sale), oxycodone, pentobarbital, remifentanyl, sufentanil, tetrahydrocannabinols, and thebaine were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2004 year-end inventories, initial 2005 manufacturing quotas, 2005 export requirements, actual and projected 2005 sales, research, product development requirements and additional applications received. Based on this information, the DEA has adjusted the final 2005 aggregate production quotas for alfentanil, cathinone, dihydromorphine, diphenoxylate, levo-alphaacetylmethadol, levo-desoxyephedrine, methadone, methadone intermediate, oxycodone, pentobarbital and sufentanil to meet the legitimate needs of the United States.

Regarding amphetamine, codeine (for conversion), difenoxin, fentanyl, hydrocodone, hydromorphone,

marihuana, methylphenidate, morphine (for sale), remifentanyl, tetrahydrocannabinols and thebaine the DEA has determined that the proposed revised 2005 aggregate production quotas are sufficient to meet the current 2005 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the 2005 final aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic Class—Schedule I	Final Revised 2005 Quotas (g)
2,5-Dimethoxyamphetamine	2,801,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
2,5-Dimethoxy-4-(n)-propylthiophenethylamine	10
3-Methylfentanyl	2
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	5
3,4-Methylenedioxymethamphetamine (MDMA)	17
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	5
4-Methylaminorex	2
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-methylenedioxyamphetamine	2
5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)	10
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	2
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	3
Alpha-methyltryptamine (AMT)	10

Basic Class—Schedule I	Final Revised 2005 Quotas (g)	Basic Class—Schedule I	Final Revised 2005 Quotas (g)	Basic Class—Schedule I	Final Revised 2005 Quotas (g)
Alpha-methylfentanyl .....	2	Dimethyltryptamine .....	3	N-Hydroxy-3,4- methylenedioxyamphetam- ine .....	2
Alpha-methylthiofentanyl .....	2	Gamma-hydroxybutyric acid .....	8,000,000	Noracymethadol .....	2
Aminorex .....	2	Heroin .....	2	Norlevorphanol .....	52
Benzylmorphine .....	2	Hydromorphanol .....	2	Normethadone .....	2
Betacetylmethadol .....	2	Hydroxypethidine .....	2	Normorphine .....	12
Beta-hydroxy-3- methylfentanyl .....	2	Lysergic acid diethylamide (LSD) .....	61	Para-fluorofentanyl .....	2
Beta-hydroxyfentanyl .....	2	Marihuana .....	4,500,000	Phenomorphan .....	2
Betameprodine .....	2	Mescaline .....	2	Pholcodine .....	2
Betamethadol .....	2	Methaqualone .....	5	Propiram .....	50,000
Betaprodine .....	2	Methcathinone .....	4	Psilocybin .....	2
Bufotenine .....	2	Methyldihydromorphine .....	2	Psilocyn .....	7
Cathinone .....	3	Morphine-N-oxide .....	252	Tetrahydrocannabinols .....	312,500
Codeine-N-oxide .....	252	N,N-Dimethylamphetamine ...	2	Thiofentanyl .....	2
Diethyltryptamine .....	2	N-Ethylamphetamine .....	2	Trimeperidine .....	2
Difenoxin .....	5,000				
Dihydromorphine .....	2,046,000				

Basic Class—Schedule II	Proposed Revised 2005 Quotas (g)
1-Phenylcyclohexylamine .....	2
Alfentanil .....	2,800
Alphaprodine .....	2
Amobarbital .....	2
Amphetamine .....	14,500,000
Cocaine .....	228,000
Codeine (for sale) .....	39,605,000
Codeine (for conversion) .....	55,000,000
Dextropropoxyphene .....	167,365,000
Dihydrocodeine .....	750,000
Diphenoxylate .....	833,000
Ecgonine .....	73,000
Ethylmorphine .....	2
Fentanyl .....	1,428,000
Glutethimide .....	2
Hydrocodone (for sale) .....	37,604,000
Hydrocodone (for conversion) .....	1,500,000
Hydromorphone .....	3,300,000
Isomethadone .....	2
Levo-alphaacetylmethadol (LAAM) .....	3
Levomethorphan .....	2
Levorphanol .....	5,000
Meperidine .....	9,753,000
Metazocine .....	1
Methadone (for sale) .....	17,940,000
Methadone Intermediate .....	20,334,000
Methamphetamine [700,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,615,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 45,000 grams for methamphetamine (for sale)] .....	2,360,000
Methylphenidate .....	35,000,000
Morphine (for sale) .....	35,000,000
Morphine (for conversion) .....	110,774,000
Nabilone .....	2
Noroxymorphone (for sale) .....	1,002
Noroxymorphone (for conversion) .....	4,000,000
Opium .....	1,280,000
Oxycodone (for sale) .....	50,490,000
Oxycodone (for conversion) .....	920,000
Oxymorphone .....	534,000
Pentobarbital .....	20,335,000
Phencyclidine .....	2,006
Phenmetrazine .....	2
Racemethorphan .....	2
Remifentanyl .....	1,800
Secobarbital .....	2
Sufentanil .....	4,500
Thebaine .....	72,453,000

The Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$117,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

Dated: November 3, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05-22287 Filed 11-8-05; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review 2006 Census of Adult Parole Supervising Agencies.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 161, page 48981 on August 22, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 9, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2006 Census of Adult Parole Supervising Agencies.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: CJ-36. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Departments of Corrections or State Parole authority. Others: The Federal Bureau of Prisons. For the CJ-36 form, 54 central reporters (two State jurisdictions in California and one each from the remaining States, the District of Columbia, the Federal Bureau of Prisons, and one local authority) responsible for keeping records on parolees will be asked to provide information for the following categories:

(a) Whether the parole agency is located within the executive or judicial branch of government, whether it is a private organization under contract to a government agency; and whether the agency is administered by the Department of Corrections, a court, an independent agency or another parole agency;

(b) As of June 30, 2006, the number of adult parolees under their jurisdiction;

(c) As of June 30, 2006, the number of adult parolees under their jurisdiction who were supervised following a discretionary release, a mandatory release, a special conditional release, or other type of release from prison;

(d) Whether the adult parole supervising agency also supervises either adult probationers or juveniles on probation or parole/aftercare, and the

number of each under supervision on June 30, 2006;

(e) Whether the adult parole supervising agency conducts prison release hearings; and between July 1, 2005 and June 30, 2006, the number of prisoners considered for release and the number of prisoners released;

(f) Whether the adult parole supervising agency sets the terms/conditions of adult parole supervision and, if not, who does;

(g) Between July 1, 2005 and June 30, 2006, the number of adult parole revocation hearings conducted by the adult parole supervising agency; or who has responsibility for conducting adult parole revocation hearings;

(h) On June 30, 2006, the number of adult parolees under their jurisdiction who were active, inactive, absconders, or supervised out of state;

(i) On June 30, 2006, the number of parolees required to have face-to-face contact with a parole officer at least once per week, once per month, and less than once per month; the number of parolees no longer required to report on a regular basis; and the number of parolees released from prison for whom a reporting frequency had not been determined;

(j) On June 30, 2006, the number of full-time and part-time payroll staff, nonpayroll staff, and contract staff employed by the agency;

(k) On June 30, 2006, the number of full-time and part-time male and female staff employed by the agency;

(l) On June 30, 2006, the number of full-time equivalent staff who directly supervised adults who were active on parole;

(m) Between July 1, 2005 and June 30, 2006, the number of parolees returned to incarceration because of a drug violation;

(n) As of June 30, 2006, whether any parolees were enrolled in a drug treatment program; and the number in a drug treatment program run by a formally trained drug treatment professional, and the number in a self-help or drug awareness program;

(o) As of June 30, 2006, the number of parolees enrolled in a sex offender treatment program;

(p) As of June 30, 2006, the number of parolees enrolled in a mental health treatment program run by a formally trained mental health professional;

(q) Whether on June 30, 2006, the parole agency had a program that provided assistance to adult parolees in obtaining housing, and the type of program;

(r) Whether on June 30, 2006, the parole agency had a program that provided assistance to adult parolees in

obtaining employment, and the type of program;

(s) On June 30, 2006, the number of separate offices in the parole agency;

(t) The number of adult parolees under supervision at the headquarters office on June 30, 2006;

(u) The name of any regional or district office with which the headquarters office is co-located;

(v) As of June 30, 2006, the number of adult parolees under supervision at each regional or district office (including field offices located within that administrative unit); and

(w) As of June 30, 2006, the number of field offices located within each of the regional or district offices which supervised adult parolees.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 54 respondents will each take an average of 3 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there will be 162 hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 3, 2005.

**Brenda E. Dyer,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 05-22272 Filed 11-8-05; 8:45 am]

**BILLING CODE 4418-18-P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Financial Status Report (Short Form).

The Department of Justice (DOJ), Office of Justice Programs (OJP), Office of the Comptroller (OC), has submitted the following information collection

request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until January 9, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have suggestions or comments especially on the estimated public burden or associated response time, or need a copy of the proposed information collection instrument with instructions, please contact Cynthia J. Schwimer, Comptroller (202) 307-0623, Office of the Comptroller, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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.

Overview of this information:

(1) *Type of information Collection:* Revision of a currently approved collection.

(2) *The title of the Form/Collection:* Financial Status Report (Short Form).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number: none; Office of the Comptroller, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The form is completed by State, Local and Tribal Governments, who were awarded grants by the Department of Justice, Office of Justice Programs, and other cross

servicing agencies. It is used as an aid for grant recipients to report the status of their expenditures.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated number of respondents is 15, 304, and the estimated time for an average respondent to reply is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 30,608 annual burden hours associated with this collection.

*If additional information is required contact:* Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 3, 2005.

**Brenda E. Dyer,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 05-22274 Filed 11-8-05; 8:45 am]

BILLING CODE 4410-18-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Exemption Application No. D-11246]

#### **Adoption of Amendment to Prohibited Transaction Exemption (PTE) 99-29 Involving Bankers Trust Company, Deutsche Bank Trust Company Americas (DBTCA), and Deutsche Bank, AG**

**SUMMARY:** This document contains an amendment to PTE 99-29 (64 FR 40623, July 27, 1999), an exemption granted to Bankers Trust Company. PTE 99-29 permits DBTCA (formerly known as Banker's Trust Company) to continue to function as a qualified professional asset manager (QPAM) under PTE 84-14 (49 FR 9494, March 13, 1994). The amendment affects participants and beneficiaries and fiduciaries of employee benefit plans to which DBTCA served as custodian.

**EFFECTIVE DATE:** The amendment is effective as of January 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams Lavigne, Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor, Washington, DC 20210 at (202) 693-8540. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On February 3, 2005, the Department

published a notice of proposed exemption that would amend PTE 99-29. The amendment was requested in an application filed on behalf of DBTCA. DBTCA is a New York banking, fiduciary, record keeping custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors worldwide. Deutsche Bank, AG indirectly wholly owns DBTCA.

The proposed amendment invited interested persons to submit comments to the Department on or before March 21, 2005. On February 17, 2005, the applicant notified the Department that the names and addresses of certain individuals who may be entitled to receive notice of the proposed amendment were contained in records that were destroyed by the events that occurred on September 11, 2001. As a result, the applicant did not notify interested persons within the three-day period specified in the proposed amendment. The applicant requested that the comment period be extended to ensure that interested persons would have a sufficient amount of time in which to provide their comments to the Department. In addition, the applicant stated that it had the names and addresses of custody clients of DBTCA as of December 31, 2002. The applicant believed that this list of clients would reasonably include all parties that would have an interest in the proposed amendment. The Department concurred with the applicant. Accordingly, on March 29, 2005, the applicant sent notice to all custody clients of DBTCA as of December 31, 2002. This notice informed interested persons of their right to comment on the proposed amendment, and informed these persons that comments were due to the Department on or before May 27, 2005.

#### **Written Comments**

The Department received one written comment. No requests for a public hearing were received. The comment was submitted by the applicant who wished to clarify that check ledgers, cancelled checks and class action records that are described in the notice of proposed amendment continue to be the property of the applicant, but such materials can only be effectively searched using State Street's record keeping systems. In this regard, State Street currently serves as inquiry response and information agent for the applicant, and maintains information on its systems. The applicant relies upon State Street to answer inquiries related to these records. Under the terms of the applicant's arrangement with State

Street, State Street may resign from its inquiry response and information retrieval duties on or after April 28, 2007. The applicant represents that in the event of State Street's resignation, the applicant will locate another agent who will create a similar retrieval system, or re-establish an in-house information retrieval system. Under either arrangement, records will be maintained in accordance with the terms specified under the amendment to PTE 99-29.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11246). The complete application file and all supplemental submissions received by the Department, are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to adopt the amendment to PTE 99-29.

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and/or 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and/or the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary provisions of section 404 of the Act which, among other things, requires a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or



statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transaction which is the subject of this exemption. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department; and

(4) Under section 408(a) of ERISA, the Department finds that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of such plan.

#### Exemption

Accordingly, PTE 99–29 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 32836, August 10, 1990), as set forth below:

Section I is amended to read as follows: “Bankers Trust Company (now known as DBTCA) shall not be precluded from functioning as ‘qualified professional asset manager’ pursuant to Prohibited Transaction Exemption 84–14 (49 FR 9494, March 13, 1994) (PTE 94–14) for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending July 27, 2009, solely because of a failure to satisfy section I(g) of PTE 84–14 as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information (the Information) entered in the U.S. District Court for the Southern District of New York, provided that:”

Section I(c) is amended to read as follows: “The custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. the examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to

assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor’s specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption. *Such audit requirements shall be applicable for any year or part thereof in which DBTCA held ERISA covered plan assets in custody.*”

Section III(a) is amended to read as follows: “For purposes of this exemption, the term ‘Bankers Trust Company’ includes Bankers Trust Company, and any entity that was affiliated with Bankers Trust Company prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries. *This term also refers to Deutsche Bank Trust Company Americas (DBTCA).*”

For a more complete statement of facts and representations supporting the Department’s decision to grant PTE 99–29, refer to the proposed exemption (64 FR 30360, July 7, 1999), and the grant notice (64 FR 30360, June 7, 1999), and the grant notice (64 FR 40623, July 27, 1999). For a more complete statement of fact and representations supporting the Department’s decision to amend PTE 99–29, refer to the notice of proposed amendment to PTE 99–29 (70 FR 5699, February 3, 2005).

Signed at Washington, DC, this 31st day of October, 2005.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.*

[FR Doc. 05–21962 Filed 11–8–05; 8:45 am]

**BILLING CODE 4520–29–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–57,143]

#### **ACCPAC International, Inc., Customer Support, Santa Rosa, CA; Notice of Negative Determination on Reconsideration**

By letter of August 19, 2005, a petitioner requested administrative reconsideration of the Department of Labor’s Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of ACCPAC International, Inc., Customer Support, Santa Rosa, California. The denial notice was signed on June 24, 2005, and published in the **Federal Register** on July 20, 2005 (70 FR 41793).

The investigation revealed that the petitioning workers of this firm or subdivision do not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further conveys that the workers of the subject firm supported the production of the software during the pre-production phases. The petitioner further conveys that the software was recorded on CD media or floppy diskettes for further distribution to customers.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated the workers of the subject firm provided development, marketing, sales, professional services, administrative, training and technical support of the ACCPAC software. The technical support representatives of the subject firm provided post-sale technical assistance, troubleshooting and training via telephone to ACCPAC customers and business partners. In addition, the workers of the subject firm provided some support to software development prior to its release on gold CDs. However, the physical gold CDs are not sold to customers, but rather represent a master copy of the software, which in its turn is sent for mass-production to an independent non-affiliated party vendor for further duplication on CD-ROMs, floppy diskettes or paper. The official supported the information previously provided by the subject firm that software created at the subject facility is not mass-produced on any media device by the subject firm for further duplication and distribution to



customers and that there are no products manufactured within the subject firm.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

Technical writing, design, programming, testing and technical assistance of the software is not considered production of an article within the meaning of Section 222 of the Trade Act. Petitioning workers do not produce an "article" within the meaning of the Trade Act of 1974. Information electronic databases, technical documentation and codes, are not tangible commodities, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), as classified by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes articles imported to the United States.

To be listed in the HTS, an article would be subject to a duty on the tariff schedule and have a value that makes it marketable, fungible and interchangeable for commercial purposes. Although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted are not listed in the HTS. Such products are not the type of products that customs officials inspect and that the TAA program was generally designed to address.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers does not produce an article. Furthermore, workers of the subject firm did not support production of an article at any affiliated facility.

The petitioner further alleges that because workers lost their jobs due to a transfer of job functions to Canada, petitioning workers should be considered import impacted.

The company official stated that the positions of six technical support representatives were moved to a Canadian office as a result of the closure of the subject firm.

Technical support of informational documentation that is electronically transmitted is not considered production within the context of TAA eligibility requirements. Further, as software and technical documentation do not become products until they are recorded on media device, there was no

shift in production of an "article" abroad within the meaning of the Trade Act of 1974.

Service workers can be certified only if worker separations are caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article domestically who meet the eligibility requirements, or if the group of workers are leased workers who perform their duties on-site at a facility that meet the eligibility requirements.

#### Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of ACCPAC International, Inc., Customer Support, Santa Rosa, California.

Signed at Washington, DC this 21st day of October, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05-22323 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-U**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-58,081]

##### Accufab Industries New Freedom, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2005 in response to a petition filed by a company official on behalf of workers at Accufab Industries, New Freedom, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 31st day of October, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05-22327 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-P**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-58,097]

##### Agilent Technologies, Inc. Wireless Business Unit a Division of the Electronic Measurements Group Loveland, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 7, 2005, in response to a petition filed by a State agency representative on behalf of workers of Agilent Technologies, Inc., Wireless Business Unit, a division of the Electronics Measurements Group, Loveland, Colorado.

The petitioning group of workers is covered by a current certification (TA-W-57,742J) issued on September 30, 2005, applicable to all workers of Agilent Technologies, Inc., Electronics Measurement Group, Loveland, Colorado. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of October, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05-22328 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-P**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

##### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 21, 2005.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 21, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S.

Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of November 2005.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

# Appendix

## TAA PETITIONS INSTITUTED BETWEEN 10/17/05 AND 10/28/05

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58137	BNZ Materials, Inc., (USWA)	Zelenople, PA	10/17/05	09/29/05
58138	Halmode Apparel, (Comp)	New York, NY	10/17/05	10/06/05
58139	Kellogg Brown and Root, Inc., (KBR), (State).	Mansfield, LA	10/17/05	10/14/05
58140	Samuel Son and Company, (Wkrs)	Detroit, MI	10/17/05	10/13/05
58141	IBM Corporation, (Wkrs)	Muskegon, MI	10/17/05	10/10/05
58142	Vishay Roederstein Electronics, Inc., (Comp).	Statesville, NC	10/17/05	10/13/05
58143	Gunderson, (State)	Portland, OR	10/17/05	10/14/05
58144	General Electric Company, (Wkrs)	Fort Wayne, IN	10/17/05	09/28/05
58145	General Cable Industries, Inc., (State)	Dayville, CT	10/17/05	10/17/05
58146	Wabash Alloys, (GMP)	Cleveland, OH	10/17/05	10/17/05
58147	Valley Woodworking Company, (Comp)	Lenoir, NC	10/17/05	10/17/05
58148	Ranco North America, (Comp)	Brownsville, TX	10/17/05	10/07/05
58149	Federal Mogul, (Wkrs)	Sparta, TN	10/17/05	10/17/05
58150	Siemens Energy and Automation, Inc., (Comp).	Bellefontaine, OH	10/18/05	10/17/05
58151	Carhartt, Inc., (Comp)	Dover, TN	10/18/05	10/18/05
58152	Native Textiles, (Comp)	Glens Falls, NY	10/18/05	10/17/05
58153	GE Sensing, (State)	New Fairfield, CT	10/18/05	10/17/05
58154	Hewlett-Packard, (Wkrs)	Nashua, NH	10/18/05	10/14/05
58155	Vansco Electronics, Inc., (Wkrs)	Valley City, ND	10/18/05	10/05/05
58156	Furukawa Electric North American APD, Inc., (Comp).	Plymouth, MI	10/18/05	10/03/05
58157	High Cotton Enterprises, Inc., (State) ..	Fort Payne, AL	10/18/05	10/07/05
58158	Falcon Plastics, (Comp)	Washington, PA	10/18/05	10/05/05
58159	FDB, Inc., (Wkrs)	Lincolnton, GA	10/18/05	09/28/05
58160	Ingram Micro, (Wkrs)	Santa Ana, CA	10/18/05	09/29/05
58161	Maxi Seal Harness Systems, Inc., (Comp).	Garland, TX	10/18/05	10/03/05
58162	Style Setter Fashions, Inc., (UNITE) ...	Philadelphia, PA	10/18/05	10/05/05
58163	V.C. Originals, (Wkrs)	Ridgeland, MS	10/18/05	09/20/05
58164	Dan River, Inc. (Comp)	Rutherfordton, NC	10/18/05	10/18/05
58165	Crane Plumbing, (Wkrs)	Ferguson, KY	10/18/05	10/06/05
58166	Penn-Union Corp., (GMP)	Edinboro, PA	10/18/05	10/06/05
58167	Galgon Industries, Inc., (Wkrs)	Fremont, CA	10/18/05	10/06/05
58168	Cooper Hand Tools, (Wkrs)	York, PA	10/18/05	09/27/05
58169	Motorola, Inc., (Wkrs)	Schaumburg, IL	10/18/05	09/21/05
58170	International Specialty Products, (Wkrs).	San Diego, CA	10/18/05	10/11/05
58171	Cooper Standard Automotive, (USW) ..	Auburn, IN	10/19/05	09/14/05
58172	Pioneer Companies, Inc., (ICWUC) ....	Tacoma, WA	10/19/05	10/18/05
58173	Cargill Malt, (USW)	Jefferson, WI	10/19/05	10/18/05
58174	Needletrade Services, LTD, (Comp) ....	Fall River, MA	10/19/05	10/18/05
58175	T.I. Automotive, (State)	Meriden, CT	10/20/05	10/19/05
58176	Dixon Ticonderoga Company, (Comp)	Versailles, MO	10/20/05	10/19/05
58177	Rexnord Corp., (Comp)	Warren, PA	10/24/05	10/20/05
58178	Bassett Furniture Industries, Inc., (Comp).	Mt. Airy, NC	10/24/05	10/20/05
58179	Oakwood Furniture Mfg., Inc., (Comp)	New Tazewell, TN	10/24/05	10/20/05
58180	Ensign-Bickford Company (The), (Comp).	Spanish Fork, UT	10/24/05	10/20/05
58181	Stimson Lumber Company, (Comp) .....	Coeur d Alene, ID	10/24/05	10/20/05
58182	Meridian Beartrack Company, (Comp)	Salmon, ID	10/24/05	10/18/05
58183	Firestone Tube Company, (State) .....	Russellville, AR	10/24/05	10/20/05
58184	Georgia-Pacific, (Comp)	Green Bay, WI	10/24/05	10/12/05
58185	General Electric, (State)	Mebane, NC	10/24/05	10/13/05
58186	Microsoft, (Wkrs)	Charlotte, NC	10/24/05	10/14/05
58187	Amerex Group, Inc., (Wkrs)	Cottage Grove, WI	10/24/05	10/08/05
58188	Staley Fabricators, Inc., (Comp)	Staley, NC	10/24/05	10/21/05

## TAA PETITIONS INSTITUTED BETWEEN 10/17/05 AND 10/28/05—Continued

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58189 .....	Meridian Automotive Systems, Inc., (Comp).	Canandaigua, NY .....	10/24/05	10/21/05
58190 .....	Meridian Automotive Systems Grand Rapids, (State).	Grand Rapids, MI .....	10/24/05	10/21/05
58191 .....	Brown Jordan Co., (State) .....	El Monte, CA .....	10/24/05	10/11/05
58192 .....	Kim Bo Sewing Co., (Wkrs) .....	San Francisco, CA .....	10/24/05	10/07/05
58193 .....	Goodman Veneer and Lumber, (Wkrs) .....	Goodman, WI .....	10/24/05	10/21/05
58194 .....	Springs Industries, Inc., (Comp) .....	Lancaster, SC .....	10/24/05	10/20/05
58195 .....	Kinesis USA, Inc., (Comp) .....	Portland, OR .....	10/24/05	10/13/05
58196 .....	Thomas C. Wilson, Inc., (Comp) .....	Long Island City, NY .....	10/24/05	10/14/05
58197 .....	Flynn Enterprises, LLC, (Wkrs) .....	Elkton, KY .....	10/24/05	10/20/05
58198 .....	Lake View Finishing, Inc., (Comp) .....	Lake View, SC .....	10/25/05	10/18/05
58199 .....	Carpostan Industries, Inc., (Comp) .....	Lake View, SC .....	10/25/05	10/18/05
58200 .....	Carpostan Yarn, Inc., (Comp) .....	Lake View, SC .....	10/25/05	10/18/05
58201 .....	Hewlett-Packard, (Wkrs) .....	Boise, ID .....	10/25/05	10/17/05
58202 .....	Key Plastics, (Wkrs) .....	Hamilton, IN .....	10/25/05	10/17/05
58203 .....	American Recreation Products, (Comp) .....	New Haven, MO .....	10/25/05	10/24/05
58204 .....	Bethel Furniture Stock, Inc., (Comp) ....	Bethel, ME .....	10/25/05	09/26/05
58205 .....	Berliss Bearing Co., (State) .....	Livingston, NJ .....	10/25/05	09/27/05
58206 .....	B and J Knits, Inc., (Comp) .....	Statesville, NC .....	10/25/05	10/20/05
58207 .....	Fiskars Home Leisure, (Comp) .....	Opelika, AL .....	10/26/05	10/12/05
58208 .....	Allegheny Ludlum, (Wkrs) .....	Brackenridge, PA .....	10/26/05	10/24/05
58209 .....	Carolina Steel Products, Inc., (Comp) ..	Gastonia, NC .....	10/26/05	10/22/05
58210 .....	Tooling Science, (State) .....	Maple Grove, MN .....	10/26/05	10/25/05
58211 .....	Fisher Technical Development, Inc., (Comp).	Columbia, MD .....	10/26/05	10/25/05
58212 .....	Wright Products Co., (Wkrs) .....	Rice Lake, WI .....	10/26/05	10/25/05
58213 .....	Celand Yarn Dyers, Inc., (Comp) .....	Thomasville, NC .....	10/26/05	10/19/05
58214 .....	Quincrafts Corporation, (Wkrs) .....	Pawtucket, RI .....	10/26/05	10/20/05
58215 .....	Bespak, Inc., (Wkrs) .....	Apex, NC .....	10/26/05	10/25/05
58216 .....	Yankee Plastics, Inc., (Comp) .....	East Hampton, MA .....	10/26/05	10/18/05
58217 .....	Carolina Mills, Inc., (Comp) .....	Valdese, NC .....	10/26/05	10/26/05
58218 .....	Encad, Inc., (Comp) .....	San Diego, CA .....	10/26/05	10/26/05
58219 .....	Woodline Productions, (State) .....	Medford, OR .....	10/27/05	10/25/05
58220 .....	Amsea, Inc., (Comp) .....	Fenton, MI .....	10/27/05	10/21/05
58221 .....	Cambridge Integrated Services Group, Inc., (Wkrs).	Mt. Clemens, MI .....	10/27/05	10/19/05
58222 .....	Ansonia Copper and Brass, Inc., (Comp).	Ansonia, CT .....	10/27/05	10/26/05
58223 .....	Alsco American Industrial Service, (State).	Portland, OR .....	10/27/05	10/26/05
58224 .....	Eaton Corporation, (Comp) .....	Jackson, MI .....	10/28/05	10/28/05
58225 .....	New Riverside Ochre Company, (Comp).	Cartersville, GA .....	10/28/05	10/17/05
58226 .....	Alcan Packaging—Cebal Americas, (Comp).	Cypress, CA .....	10/28/05	10/20/05
58227 .....	Average Joe, (State) .....	Los Angeles, CA .....	10/28/05	10/18/05
58228 .....	General Electric, (Comp) .....	Hebron, OH .....	10/28/05	10/14/05
58229 .....	Dubuit of America, (State) .....	Niles, IL .....	10/28/05	10/17/05
58230 .....	IBM, (Wkrs) .....	Rochester, MN .....	10/28/05	10/18/05
58231 .....	Peak Oilfield Services, (Comp) .....	Kenai, AK .....	10/28/05	10/27/05

[FR Doc. 05-22330 Filed 11-8-05; 8:45 am]  
BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-56,536, TA-W-56,536A and TA-W-56,536B]

**Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd, Building Division, Wall and Roof Panels Production, Galesburg, IL; Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd, Building Division, Trim and Components Production, Galesburg, IL; Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd, Building Division, Secondaries Production, Galesburg, IL; Notice of Negative Determination on Remand**

The United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Butler Manufacturing Company v. United States Secretary of Labor* (Court No. 05-00440, issued September 2, 2005). AR 181-182.

On February 7, 2005, three workers filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers at Butler Manufacturing Company, Galesburg, Illinois (TA-W-56,536). The petitioners stated that the workers' separations were due to the shift of the subject firm's production of prefabricated buildings to India, Mexico, and China and Butler's imports of that article from Mexico and China. AR 2.

The Secretary of Labor may certify as eligible for TAA benefits only those workers who are employed in the subdivision that produces the article that is adversely affected by imports of "like or directly competitive" articles. *Paden v. U.S. Department of Labor*, 562 F.2d 470, 475 (7th Cir.1977); See *Abbott v. Donovan*, 596 F.Supp 475 (C.I.T. 1984). Therefore, during the investigation, the Department of Labor (hereafter referred to as "the Department") requested information from Butler Manufacturing Company in order to determine what articles were produced at the subject firm during February 2004 through February 2005, the twelve month period prior to the petition date (February 7, 2005) which is the "relevant period" for investigation. The Department also requested sale, production, and import

figures regarding those articles produced at the Galesburg, Illinois facility during (AR 25-39, 57-66, 68) and conducted a survey of the company's major customer's regarding their purchases of those articles during the relevant period. AR 53-56, 67.

Based on information provided by the subject firm (AR 68), the Department partitioned the petition into three subparts (Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Wall and Roof Panels Production, Galesburg, Illinois, TA-W-56,536; Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Trim and Components Production, Galesburg, Illinois, TA-W-56,536A; and Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Secondaries Production, Galesburg, Illinois, TA-W-56,536B)—hereafter referred to collectively as "the subject firm"—to address those articles produced at Butler Manufacturing Company, Galesburg, Illinois facility during the relevant period: Panels, trim and components, and secondaries.

On March 2, 2005, the Department issued a determination denying certification of the workers' eligibility to apply for TAA and ATAA. AR 72-75. The negative determination was based on the investigation's findings that the subject firm did not shift its production of panels, trim and components, or secondaries to a foreign country and that there were no increased imports by the subject firm or its customers of panels, trim and components, or secondaries. The Department's Notice of determination was published in the **Federal Register** on April 1, 2005 (70 FR 16847). AR 80.

By application of April 1, 2005, the petitioners requested administrative reconsideration of the Department's denial, alleging that the workers were not separately identifiable by product line and that the workers' separations were due to a shift of production abroad and increased imports. AR 84-87. On April 1, 2005, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration. AR 92. On April 23, 2005, the Notice was published in the **Federal Register** (70 FR 21247). AR 125.

During the reconsideration investigation, the Department contacted the subject company (AR 100, 133-139) and the workers (AR 104-105) for additional information. Based on information received by the company officials (AR 100, 129, 133-139) and the workers (AR 106-124, 126-128, 130-132), the Department determined on

reconsideration that the workers were ineligible to apply for TAA and ATAA. The Department determined that those workers were not separately identifiable by product line and, nevertheless, that the subject firm did not shift production of panels, trim and components, or secondaries abroad. Instead, the subject firm was shifting production of those articles to domestic, affiliated facilities. AR 140-143. The Department issued a Notice of Negative Determination on Reconsideration on May 11, 2005. The Notice of Negative Determination on Reconsideration was published in the **Federal Register** on May 25, 2005 (70 FR 30142). AR 179-180.

By letter dated July 21, 2005 to the USCIT, petitioners requested judicial review. AR 154-155.

On September 2, 2005, the USCIT granted the Department's request for voluntary remand and directed the Department to further investigate the subject workers' eligibility to apply for TAA and ATAA. AR 181-182.

During the remand investigation, the Department carefully reviewed previously submitted information, solicited information from the plaintiff and workers (AR 201), and contacted the subject firm to obtain new and additional information regarding the articles produced during the relevant period, the work done by the subject workers, and the shift of production from the subject firm.

A careful review of previously-submitted information and newly-obtained information revealed that the Department's finding in the determination on reconsideration that the workers are not separately identifiable by product line was in error (AR 141), and the initial negative determination (of TA-W-56,536) finding on this issue (AR 74) was correct. The information shows that the workers were dedicated to particular production lines, that workers' movements between production lines were infrequent, and that such movement were determined by union guidelines and usually based on seniority. AR 41-49, 196-199. Because the workers' assignments to product lines in the Buildings Division were constant and changes among workers on the production lines were not the norm but the exception, the Department determines that the workers were separately identifiable by product line. However, regardless of whether or not the workers were separately identifiable by product line, the evidence obtained from all parties during the investigations do not support the workers' claim that there was a shift of production of prefabricated buildings or

their components abroad or increased imports of those articles during the relevant period.

Information provided by the subject firm revealed that the only articles produced during the relevant period were panels, trim and components, and secondaries. AR 183, 194–195. As such, the Department focused its remand investigation on those articles produced at the subject firm during the relevant period. AR 195–201.

According to the subject firm, all trim and component, secondaries, and panel production at the subject facility had ceased by April 2005 and had shifted to a newly built facility in Jackson, Tennessee. As anticipated by the subject firm (AR 41–42), the production shift began in February 2005 and finished in May 2005. AR 184, 195. Information provided by the subject firm revealed no imports of panels (AR 186), trim and components (AR 187), or secondaries (AR 188). The previously conducted customer survey covered the appropriate products and revealed no increased imports of any products produced by the subject firm. AR 53–56, 67.

In response to the plaintiff's assertion that production had shifted to Mexico, India and China, the company official agreed that a representative of the Mexico plant had visited the subject firm. However, the reason for that visit was related to securing replacement and updated equipment for truss purlin production in Mexico (an article not produced at the subject firm during the relevant period). AR 195. While some production of component parts of these articles did shift to Asia (China), that shift occurred in 2003, which is prior to the relevant period for this petition. Further, those components were not made during the relevant period at the subject firm. AR 184, 195.

Because the remand investigation revealed no imports of articles like or directly competitive with panels, trim and components, secondaries produced by the workers of the subject firm by the subject firm or its customers during the relevant period and no shifts of production of those articles abroad during the relevant period, the statutory requirements of neither Section 222(a)(1) and (2)(a) nor Section 222(a)(1) and (2)(B) of the Trade Act of 1974, as amended, were met, and the Department cannot certify the subject workers as eligible to apply for TAA. Further, since the workers are not eligible to apply for TAA, the workers cannot be found eligible to apply for ATAA under Section 246(a)(3)(B)(i) of that law.

## Conclusion

As the result of the findings of the investigation on remand, I affirm the negative determination of eligibility to apply for adjustment assistance for workers and former workers of Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Wall and Roof Panels Production, Galesburg, Illinois (TA–W–56,536); Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Trim and Components Production, Galesburg, Illinois (TA–W–56,536A); and Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Secondaries Production, Galesburg, Illinois (TA–W–56,536B).

Signed at Washington, DC this 1st day of November 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05–22322 Filed 11–8–05; 8:45 am]

**BILLING CODE 4310–30–U**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of October 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such

workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed

importantly to the workers' separation or threat of separation.

#### Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA-W 57,866; *Consolidated Metco, Inc.*, Clackamas, OR.

TA-W 57,867; *Capital City Press, Inc.*, Barre, VT.

TA-W 57,914; *Honeywell, Columbia*, SC.

TA-W 57,930; *Cabinet Industries, Inc.*, Danville, PA.

TA-W 57,945; *PolyVision Corporation*, Clymer, PA.

TA-W 57,945A; *PolyVision Corporation*, Dixonville, PA.

TA-W 58,023; *Fairchild Semiconductor*, West Jordan, UT.

TA-W 58,087; *Bucillo Corp.*, Hazleton, PA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA-W 57,934; *Arkay Plastics Illinois, Inc.*, Div. of *Arkay Industries, Inc.*, Paris, IL.

TA-W 57,982; *Powder Processing and Technology, LLC*, Valparaiso, IN.

TA-W 58,013; *Spectrum Yarns, Inc.*, Kings Mountain, NC.

TA-W 58,024; *Black Hawk Products Group*, Hayesville, NC.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA-W 57,865; *IBM Global Services*, Subsidiary of *IBM Corp.*, Boulder, CO.

TA-W 57,903; *Hewlett Packard, Design Delivery Organization (DDO)*, San Diego, CA.

TA-W 57,943; *Henredon Furniture Industries, Inc.*, Morganton, NC.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W 57,890; *Pillowtex Corporation*, Kannapolis, NC.

TA-W 57,890A; *Pillowtex Corporation*, Richardson, TX.

TA-W 57,940; *Ryder Integrated Logistics*, Webster, NY.

TA-W 57,988; *Express Point Technology Services, Inc.*, Golden Valley, MN.

TA-W 58,028; *Cat Logistics*, Portland, TN.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA-W 57,917; *Ultra Clean Technology*, Menlo Park, CA.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

#### None

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA-W 57,894; *New Fortune Garment Manufacturing Co.*, Oakland, CA: August 31, 2004.

TA-W 58,050; *Masterbuilt Manufacturing, Inc.*, Columbus, GA: September 8, 2004.

TA-W 57,878; *Solutia, Inc.*, Decatur, AL: September 23, 2005.

TA-W 57,886; *LSM Manufacturing Co., Inc.*, Waterbury, CT: September 2, 2004.

TA-W 57,898; *BESI, Inc.*, East Div., Vevay, IN: September 6, 2004.

TA-W 57,899; *Janef, Inc.*, t/a *Mayflower t/a Alperin*, Old Forge, PA: September 7, 2004.

TA-W 57,918; *Williams Wood Carving, Inc.*, Hickory, NC: September 7, 2004.

TA-W 57,921; *Mohawk Home, Div. of Mohawk Industries, Inc.*, Bentonville, AR: September 9, 2004.

TA-W 57,924; *Nepera, Div. of Rutherford Chemical*, Harriman, NY: September 9, 2004.

TA-W 57,935; *Jeff Hamilton Collections*, Los Angeles, CA: September 1, 2004.

TA-W 57,949; *C&W Hosiery, Inc.*, Ft. Payne, AL: September 12, 2004.

TA-W 57,951; *Laymon Hughes Hos., LLC*, Ft. Payne, AL: September 12, 2004.

TA-W 57,964; *Corlett-Turner Company*, Zeeland, MI: September 14, 2004.

TA-W 57,990; *Sun Look Garment, Inc.*, San Francisco, CA: September 20, 2004.

TA-W 57,998; *Allied Industries Co.*, dba *Duralux*, Beulaville, NC: September 12, 2004.

TA-W 58,026; *Premier Fibers*, Asheboro, NC: September 23, 2004.

TA-W 58030; *Holt Hosiery Mills, Finishing*, Burlington, NC: September 9, 2004.

TA-W 58039; *Liberty Fibers Corporation*, Subsidiary of *Silva Holdings, Inc.*, Lowland, TN: September 27, 2004.

TA-W 58122; *Select Staffing, Inc.*, Tiercon Industries, Caro, MI: September 27, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA-W 57,915; *ICU Medical*, Vernon, CT: August 29, 2004.

TA-W 57,958; *Sanmina-SCI, Bothell Ultrasound Div.*, Bothell, WA: September 12, 2004.

TA-W 57,962; *Steelcase, Inc. North America Steel—Grand Rapids Div.*, Grand Rapids, MI: October 15, 2005.

TA-W 57,978; *B.A.G. Corp.*, Div. of *Super Sack Bag, Inc.*, Savoy, TX: September 15, 2004.

TA-W 57,979; *Eaton Corp.*, EAMD *Marshall Annex* Marshall, MI: September 16, 2004.

TA-W 57,993; *Solectron USA, Inc.*, (formerly known as *SHINEI USA*), Hillsboro, OR: 6/18, 2005.

TA-W 57,996; *Beverage Air, Div. of Carrier Corporation*, Spartanburg, SC: September 20, 2004.

TA-W 58,016; *Child Craft Industries, Inc.*, New Salisbury, IN: September 12, 2004.

TA-W 58,042; *A.D.H. Manufacturing Corp.*, Etowah, TN: September 26, 2004.

TA-W 58,052; *Suez Energy Generation North America, Trigen Biopower Greenwood Div.*, Hodges, SC: September 26, 2004.

TA-W 58,057; *Emerson Motor Technologies, Industrial Motor Div.*, Kennett, MO: September 30, 2004.

TA-W 58,064; *VF Jeanswear Limited Partnership*, Subsidiary of *VF Corporation*, Greensboro, NC: October 15, 2004.

TA-W 58,088; *Twin Rivers Technologies, Inc.*, Subsidiary of *Twin Rivers Technology, LP*, Painesville, OH: October 6, 2004.

TA-W 58,093; *Tenneco Automotive*, Monroe Div., Hartwell, GA: October 7, 2004.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

TA-W 57,953; *Ocean Breeze Manufacturing*, Vernon, CA: September 13, 2004.

TA-W 58,054; *Arca Knitting, Inc.*, Hialeah, FL: September 29, 2004.

The following certification has been issued. The requirement of downstream

producer to a trade certified firm has been met.

#### None

#### Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA-W 57,958; *Sanmina-SCI, Bothell Ultrasound Div., Bothell, WA.*

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

#### None

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA-W 57,943; *Henredon Furniture Industries, Inc., Morganton, NC.*  
TA-W 57,934; *Arkay Plastics Illinois, Inc., Paris, IL.*  
TA-W 58,013; *Spectrum Yarns, Inc., Kings Mountain, NC.*  
TA-W 57,866; *Consolidated Metco, Inc., Clackamas, OR.*  
TA-W 57,914; *Honeywell, Columbia, SC.*  
TA-W 57,930; *Cabinet Industries, Inc., Danville, PA.*  
TA-W 57,945; *PolyVision Corporation, Clymer, PA.*  
TA-W 57,945A; *PolyVision Corporation, Dixonville, PA.*  
TA-W 58,023; *Fairchild Semiconductor, West Jordan, UT.*  
TA-W 58,087; *Bucillo Corp., Hazleton, PA.*  
TA-W 57,867; *Capital City Press, Inc., Barre, VT.*  
TA-W 57,917; *Ultra Clean Technology, Menlo Park, CA.*  
TA-W 58,024; *Black Hawk Products Group, Hayesville, NC.*  
TA-W 57,890; *Pillowtex Corporation, Kannapolis, NC.*  
TA-W 57,890A; *Pillowtex Corporation, Richardson, TX.*  
TA-W 57,988; *Express Point Technology Services, Inc., Golden Valley, MN.*  
TA-W 58,028; *Cat Logistics, Portland, TN.*

The Department has determined that criterion (3) of Section 246 has not been

met. Competition conditions within the workers' industry are not adverse.

#### None

#### Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA-W 57,878; *Solutia, Inc., Decatur, AL: September 23, 2005.*  
TA-W 57,886; *LSM Manufacturing Co., Inc., Waterbury, CT: September 2, 2004.*  
TA-W 57,898; *BESI, Inc., East Div., Vevay, IN: September 6, 2004.*  
TA-W 57,899; *Janeff, Inc., t/a Mayflower t/a Alperin, Old Forge, PA: October 4, 2005.*  
TA-W 57,915; *ICU Medical, Vernon, CT: August 29, 2004.*  
TA-W 57,918; *Williams Wood Carving, Inc., Hickory, NC: September 7, 2004.*  
TA-W 57,921; *Mohawk Home, Div. of Mohawk Industries, Inc., Bentonville, AR: September 9, 2004.*  
TA-W 57,924; *Nepera, Div. of Rutherford Chemical, Harriman, NY: September 9, 2004.*  
TA-W 57,935; *Jeff Hamilton Collections, Los Angeles, CA: September 1, 2004.*  
TA-W 57,949; *C&W Hosiery, Inc., Ft. Payne, AL: September 12, 2004.*  
TA-W 57,951; *Laymon Hughes Hos., LLC, Ft. Payne, AL: September 12, 2004.*  
TA-W 57,962; *Steelcase, Inc., North America Steel—Grand Rapids Div., Grand Rapids, MI: October 15, 2005.*  
TA-W 57,964; *Corlett-Turner Company, Zeeland, MI: September 14, 2004.*  
TA-W 57,978; *B.A.G. Corp., Div. of Super Sack Bag, Inc., Savoy, TX: September 15, 2004.*

TA-W 57,979; *Eaton Corp., EAMD Marshall Annex, Marshall, MI: September 16, 2004.*

TA-W 57,990; *Sun Look Garment, Inc., San Francisco, CA: September 20, 2004.*

TA-W 57,993; *Solectron USA, Inc., (formerly known as SHINEI USA), Hillsboro, OR: June 18, 2005.*

TA-W 57,996; *Beverage Air, Div. of Carrier Corporation, Spartanburg, SC: September 20, 2004.*

TA-W 57,998; *Allied Industries Co., dba Duralux, Beulaville, NC: September 12, 2004.*

TA-W 58,016; *Child Craft Industries, Inc., New Salisbury, IN: September 12, 2004.*

TA-W 58,026; *Premiere Fibers, Asheboro, NC: September 23, 2004.*

TA-W 58,030; *Holt Hosiery Mills, Finishing, Burlington, NC: September 9, 2004.*

TA-W 58,039; *Liberty Fibers Corporation, Subsidiary of Silva Holdings, Inc., Lowland, TN: September 27, 2004.*

TA-W 58,042; *A.D.H. Manufacturing Corp., Etowah, TN: September 26, 2004.*

TA-W 58,052; *Suez Energy Generation North America, Trigen Biopower Greenwood Div., Hodges, SC: September 26, 2004.*

I hereby certify that the aforementioned determinations were issued during the month of October 2005. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 2, 2005.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 05-22325 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-P**

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-57,582 and TA-W-57,582A]

**EPEC, LLC, New Bedford, MA,  
Including an Employee of EPEC, LLC,  
New Bedford, MA Located in Lake in  
Benson, NC; Amended Notice of  
Certification Regarding Eligibility To  
Apply for Worker Adjustment  
Assistance and Negative  
Determination Regarding Eligibility To  
Apply for Alternative Trade Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on August 16, 2005, applicable to workers of EPEC, LLC, New Bedford, Massachusetts. The notice was published in the **Federal Register** on September 8, 2005 (70 FR 53390).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the New Bedford, Massachusetts facility of EPEC, LLC located in Benson, North Carolina. Mr. Jeffrey Martin Hinman provided engineering support services for the production of printed circuit boards at the New Bedford, Massachusetts location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the New Bedford, Massachusetts facility of EPEC, LLC located in Benson, North Carolina.

The intent of the Department's certification is to include all workers of EPEC, LLC, New Bedford, Massachusetts, who were adversely affected by company imports.

The amended notice applicable to TA-W-57,582 is hereby issued as follows:

"All workers of EPEC, LLC, New Bedford, Massachusetts (TA-W-57,582), including an employee of EPEC, LLC, New Bedford, Massachusetts located in Benson, North Carolina (TA-W-57,582A), who became totally or partially separated from employment on or after July 15, 2004, through August 16, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;" and

I further determine that all workers of EPEC, LLC, New Bedford, Massachusetts, including an employee of EPEC, LLC, New Bedford, Massachusetts located in Benson, North Carolina are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of October 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 05-22324 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-U**

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-58,141]

**IBM Corporation Muskegon, MI; Notice  
of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 17, 2005 in response to a petition filed on behalf of workers of IBM Corporation working on-site at Dana Corporation, 2001 Sanford Street in Muskegon, Michigan.

The petitioning group of workers is covered by a current certification (TA-W-57,957C) issued on October 24, 2005. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of October, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 05-22331 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-P**

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-58,125]

**S. Lichtenberg and Company Inc.,  
Samsons Mfg. Division Waynesboro,  
GA; Notice of Termination of  
Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 13, 2005 in response to a petition filed by a company official on behalf of workers at S. Lichtenberg and Company Inc., Samsons Mfg. Division,

Waynesboro, Georgia. The workers are engaged in the production of curtains and drapes.

The Department has determined that the petitioning group of workers is covered by an active certification, TA-W-53,381A which expires on December 4, 2005. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 20th day of October, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 05-22329 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-P**

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-58,064]

**VF Jeanswear Limited Partnership A  
Subsidiary Of VF Corporation Wilson,  
NC; Amended Certification Regarding  
Eligibility To Apply for Worker  
Adjustment Assistance and Alternative  
Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 17, 2005, applicable to workers of VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Wilson, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's, women's, and children's pants and jeans.

New findings show that there was a previous certification, TA-W-53,000A, issued on October 14, 2003, for workers of VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Wilson, North Carolina who were engaged in employment related to the production of men's, women's, and children's pants and jeans. That certification expired October 14, 2005. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from October 15, 2004 to October 15, 2005, for workers of the subject firm.



The amended notice applicable to TA-W-58,064 is hereby issued as follows:

All workers of VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Wilson, North Carolina who became totally or partially separated from employment on or after October 15, 2005, through October 17, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade act of 1974.

Signed at Washington, DC, this 31st day of October 2005.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05-22326 Filed 11-8-05; 8:45 am]

**BILLING CODE 4510-30-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of the Availability of Finding of No Significant Impact for a Low-Energy Marine Seismic Survey by the Scripps Institution of Oceanography on the Louisville Ridge in the Southwest Pacific Ocean

**AGENCY:** National Science Foundation.

**ACTION:** Notice of availability of a Finding of No Significant Impact for proposed activities in the Southwest Pacific Ocean.

**SUMMARY:** The National Science Foundation gives notice of the availability of a Finding of No Significant Impact for proposed activities in the Southwest Pacific Ocean.

The Division of Ocean Sciences in the Directorate for Geoscience (GEO/OCE) has prepared an Environmental Assessment of a marine geophysical survey by the Research Vessel Roger Revelle, in the vicinity of Louisville Ridge in the Pacific Ocean, January–February 2006. The proposed action is expected to result in substantial benefits to NSE-funded research in ocean science. The draft Environmental Assessment was available for public review for a 30-day period.

**DATES:** Comments on the FONSI must be submitted on or before December 9, 2005.

**ADDRESSES:** Copies of the Finding of No Significant Impact (FONSI) and the Environmental Assessment (EA) are available upon request from: Dr. Alexander Shor, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292-8583. Written comments should be submitted to this same address, or via email to

[ashor@msf.gov](mailto:ashor@msf.gov). The FONSI and EA are also available on the agency's Web site at [http://www.nsf.gov/geo/oce/pubs/scripps\\_louisville\\_ridge\\_EA.pdf](http://www.nsf.gov/geo/oce/pubs/scripps_louisville_ridge_EA.pdf) and [http://www.nsf.gov/geo/oce/pubs/scripps\\_louisville\\_ridge\\_FONSI.pdf](http://www.nsf.gov/geo/oce/pubs/scripps_louisville_ridge_FONSI.pdf).

**SUPPLEMENTARY INFORMATION:** The National Science Foundation prepared a draft Environmental Assessment (EA) for a marine geophysical survey in the Pacific Ocean and solicited public comments (**Federal Register**): July 7, 2005, Vol. 70, No. 129, Page 39346). The National Science Foundation has prepared a Finding of No Significant Impact (FONSI) based on this EA, in accordance with CEQ regulations § 1500-1508 and 45 CFR 640. It was determined that the proposed activity would not result in a significant impact on the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, a FONSI was issued, and no environmental impact statement is required.

copies of the FONSI and the Environmental Assessment titled, Environmental Assessment of a Planned Low-Energy Marine Seismic Survey by the Scripps Institution of Oceanography on the Louisville Ridge in the Southwest Pacific Ocean, January–February 2006, are available upon request from: Dr. Alexander Shor, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292-8583 or at the agency's Web site at [http://www.nsf.gov/geo/oce/pubs/scripps\\_louisville\\_ridge\\_EA.pdf](http://www.nsf.gov/geo/oce/pubs/scripps_louisville_ridge_EA.pdf) and [http://www.nsf.gov/geo/oce/pubs/scripps\\_louisville\\_ridge\\_FONSI.pdf](http://www.nsf.gov/geo/oce/pubs/scripps_louisville_ridge_FONSI.pdf).

The National Science Foundation invites interested members of the public to provide written comments on this FONSI.

Dated: November 3, 2005.

**Dr. Alexander Shor,**

*Division of Ocean Sciences, National Science Foundation.*

[FR Doc. 05-22302 Filed 11-08-05; 8:45 am]

**BILLING CODE 7555-01-M**

## NUCLEAR REGULATORY COMMISSION

### State of Minnesota: NRC Draft Staff Assessment of a proposed Agreement Between the Nuclear Regulatory Commission and the State of Minnesota

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of a Proposed Agreement with the State of Minnesota.

**SUMMARY:** By letter dated July 6, 2004, Governor Tim Pawlenty of Minnesota requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would discontinue, and Minnesota would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a Draft Staff Assessment of the Minnesota Program. Comments are requested on the proposed Agreement and the NRC Draft Staff Assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Minnesota from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

**DATES:** The comment period expires December 9, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

**ADDRESSES:** Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555-0001. Comments may be submitted electronically at [nrcprep@nrc.gov](mailto:nrcprep@nrc.gov).

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397-4209, or (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O-1-F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Minnesota including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML041960496, ML041960499, ML052440344, ML050130375, ML050140452, ML051330043, ML051740384, ML051650073, ML052200424, and ML053060372.

**FOR FURTHER INFORMATION CONTACT:**

Cardelia Maupin, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-3340 or e-mail [CHM1@nrc.gov](mailto:CHM1@nrc.gov).

**SUPPLEMENTARY INFORMATION:** Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States. The Agreement States currently regulate approximately 17,200 agreement material licenses, while NRC regulates approximately 4,700 licenses. Under the proposed Agreement, approximately 167 NRC licenses will transfer to Minnesota. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This Notice is being published in fulfillment of the requirement.

## I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials<sup>1</sup> and activities that involve use of the materials.

In a letter dated July 6, 2004, Governor Pawlenty certified that the State of Minnesota has a program for the control of radiation hazards that is adequate to protect public health and safety within Minnesota for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory

responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this Notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Minnesota requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which NRC's authority is discontinued and transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the State of Minnesota and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;
- Provide for the amendment, suspension or termination of the Agreement; and
- Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Minnesota.

(c) Minnesota currently registers users of naturally-occurring and accelerator-produced radioactive materials. Authority for Minnesota's radiation control unit and proposed Agreement State activities is primarily found in Minnesota Statutes, sections 144.12–144.121, and in the Minnesota Rules Chapter 4731. Section 144.1202 provides the authority for the Governor to enter into an Agreement with the Commission and contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as

Minnesota licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC Draft Staff Assessment finds that the Minnesota Program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

## II. Summary of the NRC Draft Staff Assessment of the Minnesota Program for the Control of Agreement Materials

NRC staff has examined the Minnesota request for an Agreement with respect to the ability of the Minnesota radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to herein as the "NRC criteria"), published on January 23, 1981 (46 FR 7540), as amended by policy statements published on July 16, 1981 (46 FR 36969), and on July 21, 1983 (48 FR 33376).

(a) Organization and Personnel. The agreement materials program will be located within the existing Environmental Health Division (Program) of the Minnesota Department of Health (MDH). The Program will be responsible for implementation of all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Minnesota State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. The Program supervisor has more than 20 years work experience in radiation protection.

The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Minnesota has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 3.5 full-time professional/technical and administrative employees for the agreement materials program. The

<sup>1</sup> The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC.

(b) *Legislation and Regulations.* The MDH is designated by law in section 144.1202 of the Minnesota Statutes to be the radiation control agency. The law provides the MDH the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The MDH is authorized to promulgate regulations.

The State's regulations are found in Minnesota Rules Chapter 4731 effective June 2004. The NRC staff reviewed and forwarded comments on these regulations to the Minnesota staff. The NRC staff review verified that, with the comments incorporated, the Minnesota rules, and with the addition of legally binding requirements to incorporate recent changes to 10 CFR part 35 and 71 contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The MDH has extended the effect of the rules, where appropriate, to apply to naturally-occurring or accelerator-produced radioactive materials (NARM), in addition to agreement materials. The NRC staff is satisfied that the Minnesota Program, will not regulate in areas reserved to the NRC in matters concerning or affecting the proposed Agreement.

(c) *Storage and Disposal.* Minnesota has also adopted NRC compatible requirements for the handling and storage of radioactive material. Minnesota will not seek authority to regulate the land disposal of radioactive material as waste. The Minnesota waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Minnesota licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Minnesota has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) *Recordkeeping and Incident Reporting.* Minnesota has adopted the sections compatible with the NRC regulations which specify requirements

for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Minnesota has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Minnesota has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Minnesota radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Minnesota Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The MDH is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Minnesota law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Minnesota law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Minnesota. The law provides that these former NRC licenses will expire on the date of expiration specified in the NRC license.

Minnesota also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. Minnesota Rules Chapter 4731 provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Minnesota to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the Minnesota Program will continue to be compatible with the

NRC's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Minnesota to use their best efforts to accord such reciprocity.

### III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its Draft Staff Assessment, the NRC staff concludes that the State of Minnesota meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. NRC will continue the formal processing of the proposed Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

Dated at Rockville, Maryland, this 3rd day of November, 2005.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

### **Appendix A—An Agreement Between the United States Nuclear Regulatory Commission and the State of Minnesota for the Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended**

*Whereas*, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to

enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

*Whereas*, The Governor of the State of Minnesota is authorized under § 144.1202, subdivision 1, Minnesota Statutes, to enter into this Agreement with the Commission; and,

*Whereas*, The Governor of the State of Minnesota certified on July 6, 2004, that the State of Minnesota (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

*Whereas*, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

*Whereas*, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

*Whereas*, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

*Whereas*, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

*Now, therefore*, It is hereby agreed between the Commission and the Governor of the State acting in behalf of the State as follows:

#### Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

#### Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear materials, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

F. The regulation of the land disposal of by-product, source, or special nuclear materials waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

#### Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs E, F, and G, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

#### Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or

producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear materials shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

#### Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear materials.

#### Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

#### Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

#### Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or

part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

#### Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [City, State] this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,  
Chairman.

For the State of Minnesota.

Tim Pawlenty,  
Governor.

[FR Doc. 05-22317 Filed 11-8-05; 8:45 am]

BILLING CODE 7590-01-P

#### NUCLEAR REGULATORY COMMISSION

##### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it

displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* 10 CFR Part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material.
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. Information submitted in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.
5. *Who will be required or asked to report:* All persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.
6. *An estimate of the number of responses:* 35,178 (7,648 NRC Licensee responses (3,163 Responses + 4,485 Recordkeepers) and (27,530 Agreement State Licensee responses (11,384 Responses + 16,146 Recordkeepers)).
7. *The estimated number of annual respondents:* 20,631 (4,485 NRC licensees and 16,146 Agreement State licensees).
8. *An estimate of the number of hours needed annually to complete the requirement or request:* 248,034 (NRC licensees 53,948 hours [25,983 reporting + 27,965 recordkeeping] and Agreement State licensees 194,086 hours [93,431 reporting + 100,655 recordkeeping] or 8.2 hours per response and 6.2 hours per recordkeeper).
9. An indication of whether section 3507(d), Pub. L. 104-13 applies: Not applicable.
10. *Abstract:* 10 CFR Part 30 establishes requirements that are applicable to all persons in the United States governing domestic licensing of radioactive byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination whether the possession, use, and transfer of byproduct material is in conformance with the Commission's regulations for protection of the public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 9, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John Asalone, Office of Information and Regulatory Affairs (3150-0017), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 1st day of November 2005.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 05-22314 Filed 11-8-05; 8:45 am]

BILLING CODE 7590-01-P

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271]

##### Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station Draft Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level

**AGENCY:** Nuclear Regulatory Commission (NRC or the Commission).

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The NRC has prepared a draft Environmental Assessment as its evaluation of a request by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Entergy or the licensee) for a license amendment to increase the maximum thermal power at Vermont Yankee Nuclear Power Station (VYNPS) from 1593 megawatts-thermal (MWt) to 1912 MWt. This represents a power increase of approximately 20 percent for VYNPS.

As stated in the NRC staff's position paper dated February 8, 1996, on the Boiling-Water Reactor Extended Power Uprate (EPU) Program, the NRC staff will prepare an environmental impact statement if it believes a power uprate will have a significant impact on the human environment. The NRC staff did not identify any significant impact from the information provided in the licensee's EPU application for VYNPS or the NRC staff's independent review; therefore, the NRC staff is documenting its environmental review in an environmental assessment. Also, in accordance with the staff's position paper, the draft environmental assessment and finding of no significant impact is being published in the **Federal Register** with a 30-day public comment period.

**DATES:** The comment period expires December 9, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration of comments received on or before December 9, 2005.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T-6D59, Washington, DC 20555-0001. Written comments may also be delivered to 11545 Rockville Pike, Room T-6D59, Rockville, Maryland 20852 from 7:30 a.m. to 4:15 p.m. on Federal workdays. Copies of written comments received will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or send an e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC is considering issuance of an amendment to Facility Operating License No. DPR-28 issued to Entergy for operation of VYNPS located in Windham County, Vermont.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Ennis, Office of Nuclear Reactor Regulation, Mail Stop O-8B1, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at (301) 415-1420, or by e-mail at [rxen@nrc.gov](mailto:rxen@nrc.gov).

## Environmental Assessment

### Plant Site and Environs

The EPU will apply to the facilities at the site of VYNPS located on the west shore of the Connecticut River in the town of Vernon, Vermont. Vernon is approximately four miles north of the Massachusetts state line. Vernon is located in Windham County.

The VYNPS site is located on Vernon Pond on the Connecticut River, about two-thirds of a mile upstream of the Vernon Hydroelectric Dam, at Connecticut River mile 142. Vernon Pond is the portion of the Connecticut River above Vernon Hydroelectric Dam. The site is surrounded by the Connecticut River on the east, by farm and pasture land mixed with wooded areas on the north and south, and by the town of Vernon on the west. The elevation of the VYNPS site is approximately 76 meters (250 feet) above mean sea level.

Northeast of the site, the Pisgah Mountain range rises to 457 meters (1500 feet). To the west and northwest of the site, mountains and hills rise to 549 meters (1800 feet). Approximately 13 kilometers (km) (8 miles (mi)) southeast of the site are Warwick State Forest and Northfield State Forest. Colrain State Forest is approximately 29 km (18 mi) southwest of Vernon. Green Mountain National Forest is located approximately 48 km (30 mi) west of Vernon.

VYNPS is a single-unit boiling-water reactor designed by General Electric, with a maximum reactor core power level output of 1593 MWt. Plant cooling is provided by either an open-cycle system, a closed-cycle cooling system, or a helper-cycle system. The mode of operation is selected to limit the heat discharged to the Connecticut River. The closed-cycle cooling system is equipped with a cooling tower that dissipates heat primarily to the atmosphere. After passing through the condenser, circulating water rejects waste heat to the atmosphere utilizing the cooling tower. Remaining waste heat is discharged in the form of blowdown from the circulating water system into the Connecticut River. In the open-cycle mode, no water passes through the cooling towers. Water is removed from the Connecticut River for cooling and discharged back to the Connecticut River downstream of the intake structure. In the helper-cycle mode, a portion of the water discharged from the condensers is cycled through the cooling towers before being discharged to the Connecticut River.

### Identification of the Proposed Action

By letter dated September 10, 2003, Entergy proposed an amendment to the operating license for VYNPS to increase the maximum thermal power level by approximately 20 percent, from 1593 MWt to 1912 MWt. The change is considered an EPU because it would raise the reactor core power level more than 7 percent above the original licensed maximum power level. This amendment would allow the heat output of the reactor to increase, which would increase the flow of steam to the turbine. This would result in the increase in production of electricity and the amount of waste heat delivered to the condenser, and an increase in the temperature of the water being discharged into the Connecticut River. This is the first request by Entergy for a power uprate at VYNPS; no other power uprates have previously been requested or granted for this site.

### The Need for the Proposed Action

Entergy estimates that the EPU will result in an additional 100 to 110 megawatts-electric being generated. This additional electricity generation can power approximately 110,000 extra homes, reducing the need to obtain electricity from other sources. The EPU can be implemented without substantial capital investment and would not cause the environmental impacts that would occur if construction of a new power generation facility were sought to meet the region's electricity needs.

### Environmental Impacts of the Proposed Action

At the time of issuance of the operating license for VYNPS, the NRC staff noted that any activity authorized by the license would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of VYNPS, which was issued in July 1972. This environmental assessment summarizes the radiological and non-radiological impacts on the environment that may result from the currently proposed action.

### Non-Radiological Impacts

#### Land Use Impacts

The potential impacts associated with land use for the proposed action include impacts from construction and plant modifications. The impacts from construction due to the proposed EPU are minimal. No expansion of roads, parking lots, equipment storage or laydown areas, or onsite transmission and distribution equipment including transmission line rights-of-way is anticipated to support the proposed

action. The only new construction required to support the EPU is the installation of temporary office space using modular units. This resulted in minor soil disturbance due to trenching, setting foundation columns, hook-up of water, sewer, telephone, and electricity.

In addition, a few modifications to plant equipment will take place to support the EPU. The most significant modifications include replacement of the high-pressure turbine steam path, rewinding the main generator, replacement of four high-pressure heaters, and replacement of the main transformer. The plant modifications will not result in any changes in land use and historic and archeological resources should not be affected by the proposed EPU. The proposed EPU would not modify land use at the site significantly over that described in the FES. Therefore, the staff concludes that the environmental land use impacts of the proposed EPU are bounded by the impacts previously evaluated in the FES.

#### *Cooling Tower Impacts*

The potential impacts associated with increased cooling tower operation for the proposed action include aesthetic impacts due to the increased moisture content of the air. VYNPS has cooling towers that are currently used to reduce the heat output to the environment. The cooling towers are not currently used during the "winter period" of October 15 through May 15, but following the EPU, the cooling towers may be required for this period in order to meet the water discharge thermal limits set forth in the National Pollutant Discharge Elimination System (NPDES) permit. The operation of the cooling towers during the "winter period" will result in a visible plume. However, heat rejection rates during this period are less than during the "summer period" of May 16 to October 14, so the visible plume size will not be larger than during the remainder of the year. The cooling tower plume dimensions during the "summer period" will increase following the EPU. The dimensions will increase by approximately 100 meters in length, 20 to 30 meters in width, and up to 50 meters in height. The increase in plume dimensions during the "summer period" and the presence of a plume during the "winter period" will not cause a significant aesthetic impact because similar plumes have been present in the area of VYNPS since 1972, and industrial plumes are a common feature to the Connecticut River Valley.

No significant fogging or icing due to cooling tower operation is predicted for

the EPU. The Seasonal/Annual Cooling Tower Impact Program evaluation determined that there is no predicted ground-level fogging or icing during the year. The evaluation was performed for NPDES "summer period" and "winter period" thermal discharge limits.

No significant increase in noise is anticipated for cooling tower operation following the EPU. A study performed on the VYNPS cooling tower resulted in sound increases of less than one decibel for the increased cooling tower operation.

The aesthetic impacts associated with increased cooling tower operation for the proposed action will not change significantly over the aesthetic impacts associated with current cooling tower operation. Plume dimensions will increase, but will remain consistent with the current aesthetic impacts in the VYNPS environment. No significant fogging or icing is predicted, and no significant increase in noise level is predicted for the increased cooling tower operation. Therefore, the staff concludes that there are no significant aesthetic or atmospheric impacts associated with increased cooling tower operation for the proposed action.

#### *Transmission Facility Impacts*

The potential impacts associated with transmission facilities for the proposed action could include changes in transmission line corridor right-of-way maintenance and electric shock hazards due to increased current. The proposed EPU would not require any physical modifications to the transmission lines. Entergy's transmission line right-of-way maintenance practices, including the management of vegetation growth, would not change. There will be no change to operating voltage or transmission line rights-of-way. Transmission line clearances will remain unchanged. Modifications to onsite transmission equipment are necessary to support the EPU, including replacement of the high-pressure turbine steam path, rewind of the main generator, replacement of four high-pressure heaters, and replacement of the main transformer.

The National Electric Safety Code (NESC) provides design criteria that limit hazards from steady-state currents. The transmission lines currently meet the applicable shock prevention provisions of the NESC. There will be an increase in current passing through the transmission lines associated with the increased power level of the proposed EPU. The increased electrical current passing through the transmission lines will cause an increase in electromagnetic field

strength in the transmission line corridors. The licensee evaluated the transmission line loadings based on the approximately 20-percent power uprate and concluded that there will be no significant increase in the risk of shock under the transmission lines. Based on this information, the staff concludes that adequate protection will be provided against hazards from electric shock even with the slight increase in current attributable to the EPU.

The impacts associated with transmission facilities for the proposed action will not change significantly over the impacts associated with current plant operation. There are no physical modifications to the transmission lines, transmission line right-of-way maintenance practices will not change, there are no changes to transmission line rights-of-way or vertical clearances, and electric current passing through the transmission lines will increase only slightly. Therefore, the staff concludes that there are no significant impacts associated with transmission facilities for the proposed action.

#### *Water Use Impacts*

Potential water use impacts from the proposed action include hydrological alterations to the Connecticut River and changes to plant water supply. VYNPS uses cooling water from Vernon Pond on the Connecticut River, and discharges heated water back to the Connecticut River. Vernon Pond is the portion of the Connecticut River above Vernon Hydroelectric Dam. VYNPS can be operated in one of three modes: The open-cycle mode, the closed-cycle mode, or the helper-cycle mode. The mode of operation is selected to limit the heat discharged to the Connecticut River. In the open-cycle mode, no water passes through the cooling towers. Water is removed from the Connecticut River for cooling and discharged to a point downstream. In the closed-cycle mode, the total cooling water discharge flow is pumped from the plant to the cooling towers for heat dissipation. Cooling tower blowdown is discharged back to the Connecticut River. In the helper-cycle mode, only a portion of the cooling water discharge flow is cycled through the cooling towers before being discharged to the Connecticut River.

The NPDES permit limits the amount of heat discharged to the Connecticut River from the operation of VYNPS. The thermal limit set in the NPDES permit will not change with the EPU. In order to comply with the NPDES thermal limit following the EPU, Entergy plans to operate the cooling towers more often to dissipate heat to the atmosphere rather than the river.



Due to the large flow rate of the Connecticut River, heated water discharged to the Connecticut River will begin to mix immediately with the river water and cool. A hydrological-biological study of Vernon Pond conducted in 1974–1977 included a thermal study. This study concluded that during periods of low flow in the Connecticut River, the thermal plume from the VYNPS discharge extends outward into the river channel before being swept downstream. During periods of high flow in the Connecticut River, the strong river currents shear the thermal plume and force the plume to flow along the Vermont shore. Due to these flow patterns in the Connecticut River and the thermal limits set in the NPDES permit, the EPU should not cause hydrological alterations to the Connecticut River.

The EPU would not involve any configuration change to the intake structure. The pump capacity will not change, so that there will not be an increase in the rate of withdrawal of water from the Connecticut River. There would be a slight increase in the amount of Connecticut River water consumed as a result of the EPU under all cooling modes of operation due to increased evaporative losses. During the NPDES summer period (May 16 to October 14), the increased water consumption will be less than 0.1% of the average monthly river flow. During the NPDES winter period (October 15 to May 15), the increased water consumption will be less than 0.2% of the average monthly river flow. Therefore, the increased loss is insignificant relative to the flow in the Connecticut River. On this basis, the staff concludes that there is no significant impact to the hydrological pattern on the Connecticut River, and there is no significant impact due to water consumption as a result of the proposed action.

#### Discharge Impacts

Potential impacts to the Connecticut River from the VYNPS discharge could include increased turbidity, scouring, erosion, and sedimentation. These discharge-related impacts apply to open-cycle flow due to the large volume of water discharged to the river. However, since the EPU will not result in any significant change in the amount of water withdrawn from the Connecticut River during open-cycle operation, there will be no significant change in the discharge volume or velocity; therefore, there will be no changes in turbidity, scouring, erosion, or sedimentation related to the EPU.

Surface water and wastewater discharges at VYNPS are regulated by

the State of Vermont via a NPDES permit (NPDES No. VT0000264). The NPDES permit is periodically reviewed and renewed by the Agency of Natural Resources (ANR), Department of Environmental Conservation in Waterbury, Vermont. The EPU would cause an increase in the temperature of the water discharged to the Connecticut River, but the temperature of the water discharged will remain within thermal limits specified in the NPDES permit. The blowdown from the increased usage of the cooling towers would also be discharged to the Connecticut River. There is no significant additional impact to the Connecticut River expected from the increased operation of the cooling towers because cooling tower blowdown will increase only slightly due to minor increased usage of the cooling towers.

Entergy is requesting an amendment to the NPDES permit to allow a one-degree increase in the thermal discharge limit, for certain river water temperature ranges, for the “summer period” as shown in Table 1.

TABLE 1.—PROPOSED SUMMER NPDES PERMIT CHANGE

Upstream river temperature	Existing delta-temperature increase limit	Proposed delta-temperature increase limit
Above 78 °F .....	2 °F .....	2 °F
Greater than 63 °F, Less than or equal to 78 °F.	2 °F .....	3 °F
Greater than 59 °F, Less than or equal to 63 °F.	3 °F .....	4 °F
Greater than or equal to 55 °F, Less than or equal to 59 °F.	4 °F .....	5 °F
Below 55 °F .....	5 °F .....	5 °F

The NPDES permit amendment is not necessary for the EPU, and VYNPS will continue to operate under the current thermal discharge limits (under either the current NRC license or the EPU) if the NPDES permit amendment is not granted.

VYNPS has been operating within the current NPDES limits; therefore, these thermal limits represent an upper bound of the current impact on the river water temperatures in the vicinity of the discharge. The proposed one-degree increase in the current NPDES thermal discharge limit similarly represents the expected upper bound of the impact on the river water temperatures during the EPU. VYNPS will comply with the current thermal limits in the NPDES permit following the EPU if the NPDES

permit amendment request is not granted, and any discharge impacts for the proposed action will be the same as the current impacts from plant operation. Therefore, the staff concludes that there will be no significant impact on the Connecticut River from VYNPS discharge for the proposed action.

Chemicals and concentrations released from VYNPS into the Connecticut River are regulated by the State of Vermont through the NPDES permit. VYNPS will continue to operate within the current NPDES permit limits following the power uprate.

Since there will be no increase in the VYNPS staffing levels during operations as a result of the power uprate, there will also be no increase in sanitary waste.

#### Impacts on Aquatic Biota

The potential impacts to aquatic biota from the proposed action include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance. The VYNPS has intake and discharge structures on the Connecticut River. The aquatic species evaluated in this environmental assessment are those in the vicinity of the intake and discharge structures.

VYNPS does entrain and impinge aquatic species. Entrainment and impingement of aquatic species are covered in the NPDES permit under section 316(b) of the Clean Water Act. Entrainment was monitored for over a decade beginning in 1972, and determined to be insignificant by the Environmental Advisory Committee. The Environmental Advisory Committee is made up of Vermont Department of Environmental Conservation, Vermont Department of Fish and Wildlife, New Hampshire Fish and Game Department, New Hampshire Department of Environmental Services, Massachusetts Office of Watershed Management, Massachusetts Division of Fisheries and Wildlife, and the Coordinator of the Connecticut River Anadromous Fish restoration program of the U.S. Fish and Wildlife Service. The Vermont ANR concluded that no further entrainment sampling was required following historical studies conducted during the same time period, and dropped entrainment from the NPDES permit. Entrainment is no longer monitored at VYNPS. The ANR determined that entrainment sampling should be replaced with alternative biological monitoring of species in the Connecticut River. Therefore, since the 1980's, the licensee has conducted extensive monitoring as required by the ANR to determine if there are any potential



impacts to aquatic species in the VYNPS intake and discharge areas. These procedures are not expected to change following the EPU.

Impingement is monitored annually and is considered low. Ecological studies of the Connecticut River Vernon, Vermont Report 32, dated May 2003, describes how Entergy meets the requirements of the NPDES permit through impingement sampling. During 2002, 27 species of fish were collected, and all fish species collected were typical of the Connecticut River drainage. The Environmental Advisory Committee has established limits for impingement of American shad and Atlantic salmon, and VYNPS has never approached the impingement limits set for these species. Since VYNPS has never approached the impingement limits set for American shad and Atlantic salmon, the ANR has concluded that impingement of other species at VYNPS meets applicable laws. The flow rate of water being withdrawn from the Connecticut River through the intake structure will not increase following the EPU, and there will not be any configuration change to the intake structure to support the EPU. Therefore, no increase in the impingement of fish or shellfish, or in the entrainment of planktonic organisms would be expected following the EPU.

On July 9, 2004, the Environmental Protection Agency (EPA) published a final rule in the **Federal Register** (69 FR 41575) addressing cooling water intake structures at existing power plants whose flow levels exceed a minimum threshold value of 50 million gallons per day. The rule is Phase II in EPA's development of section 316(b) regulations that establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at existing facilities that exceed the threshold value for water withdrawals. The national requirements, which are implemented through NPDES permits, minimize the adverse environmental impacts associated with the continued use of the intake systems. Licensees are required to demonstrate compliance with the Phase II performance standards at the time of renewal of their NPDES permit. Licensees may be required, as part of the NPDES renewal, to alter the intake structure, redesign the cooling system, modify station operation, or take other mitigative measures as a result of this regulation. The new performance standards are designed to reduce significantly impingement and entrainment losses due to plant operation. Any site-specific mitigation

would result in less impact due to continued plant operation.

The NPDES permit limits the amount of heat discharged to the Connecticut River from the operation of VYNPS. An analysis conducted in accordance with the NPDES permit on fish and aquatic species in 2002 concluded that there is no significant negative relationship between these species and the thermal discharge. Actually, a larger community of aquatic species was found to colonize near the VYNPS discharge. This thermal limit specified in the NPDES permit will not change with the EPU. Because Entergy will continue to meet the thermal discharge limit set by the NPDES permit following the EPU, there should be no additional thermal discharge effects on aquatic species for the proposed action.

As discussed in the transmission facility impacts section of this environmental assessment, transmission line right-of-way maintenance practices will not change for the proposed action. Therefore, the staff concludes that there are no significant impacts to aquatic biota associated with transmission line right-of-way maintenance for the proposed action.

In conclusion, there will be no increase in the impacts of entrainment or impingement because there will be no increase in the flow rate of water being withdrawn from the Connecticut River, and the amount of heat discharged to the Connecticut River will remain within the thermal limit specified by the NPDES permit following the EPU. There are no changes in transmission line right-of-way maintenance associated with the proposed action. Therefore, the staff concludes that there are no significant impacts to aquatic biota for the proposed action.

#### *Impacts on Terrestrial Biota*

The potential impacts to terrestrial biota from the proposed action include impacts due to construction activities and transmission line right-of-way maintenance. As discussed in the transmission facility impacts section of this environmental assessment, transmission line right-of-way maintenance practices will not change for the proposed action. Similarly, as discussed above, apart from the construction of temporary office space using modular units, construction activities due to the EPU will not disturb land on the VYNPS site. Therefore, the staff concludes that there are no significant impacts to terrestrial plant or animal species associated with construction activities or transmission

line right-of-way maintenance for the proposed action.

#### *Impacts on Threatened and Endangered Species*

Potential impacts to threatened and endangered species from the proposed action include the impacts assessed in the aquatic and terrestrial biota sections of this environmental assessment. These impacts include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance for aquatic species, and impacts due to transmission line right-of-way maintenance for terrestrial species.

There are three species listed as threatened or endangered under the Federal Endangered Species Act within Windham County, Vermont. These are the Bald Eagle (*Haliaeetus leucocephalus*), Indiana Bat (*Myotis sodalis*), and Northeastern Bulrush (*Scirpus ancistrochaetus*). There are no records of any of these species on the VYNPS site. However, no formal surveys have been conducted by Entergy or the State of Vermont on the VYNPS site. Critical habitat has been designated for the Indiana Bat (*M. sodalis*), but not in the State of Vermont. Critical habitat has not been designated for the Bald Eagle (*H. leucocephalus*) or the Northeastern Bulrush (*S. ancistrochaetus*). There is a Bald Eagle (*H. leucocephalus*) nest downstream of the VYNPS site, on Stebbins Island in New Hampshire, and Bald Eagles (*H. leucocephalus*) have been observed flying over the VYNPS site. However, the Bald Eagle (*H. leucocephalus*) should not be impacted by the EPU because there are no Bald Eagles (*H. leucocephalus*) on the site and the NPDES permit includes provisions for protection of the Bald Eagle (*H. leucocephalus*) habitat.

There are no threatened and endangered aquatic species in the Connecticut River. Ecological Studies of the Connecticut River Vernon, Vermont Report 32, dated May 2003, describes how Entergy meets the requirements of the NPDES permit through impingement sampling. An analysis of this report determined that no Federally-listed threatened or endangered species were collected.

The Vermont Nongame and Natural Heritage Program, associated with the Vermont Department of Natural Resources, reviewed the EPU project and found no undue adverse impact to nongame resources or natural areas from the proposed action. There are no Federally-listed threatened and endangered species recorded on the VYNPS site, and there is no critical

habitat in the state of Vermont for the three listed species in Windham County. Therefore, the staff concludes that there is no effect to threatened and endangered species associated with the proposed action.

#### *Social and Economic Impacts*

Potential social and economic impacts due to the proposed action include changes in tax revenue for Windham County and changes in the size of the workforce at VYNPS. The NRC staff has reviewed the information provided by the licensee regarding socioeconomic impacts. Entergy is a major employer in the community with approximately 670 full-time employees and contractors. Entergy is also a major contributor to the local tax base, but does not remit tax revenues directly to Windham County. Entergy personnel indirectly contribute to the tax base by paying sales and property taxes, state income taxes, and hotel and meal taxes which are paid by Entergy contractors while working at VYNPS. VYNPS pays a State Education Tax which is based on the level of generation of electrical power. The additional electrical power generated from the EPU will result in a proportional increase in taxes. The Tax Stabilization Contract, entered into by the Town of Vernon, Vermont and the owners of VYNPS, determines Entergy's contribution to the remaining local tax base. The contract specifies a Total

Listed Value to be used for assessing Municipal Services property tax through 2010. The Total Listed Value applies to all real and personal property owned on April 1, 2000, and acquired thereafter, which is used in connection with the generation of electrical power through the nuclear fission process.

The proposed EPU would not significantly affect the size of the VYNPS labor force and would not have a material effect upon the labor force required for future outages after all stages of the modifications needed to support the EPU are complete. Entergy completed all major modifications in the Spring 2004 refueling outage, which required approximately 425 additional workers. Normally, less than 700 additional personnel are required for refueling outages; the Spring 2004 refueling outage required approximately 1125 additional personnel. Additional modifications needed to support the EPU will be completed during the next refueling outage. The remaining modifications are less significant than those already implemented and are expected to require less than 100 additional workers to supplement typical refueling outage staffing levels.

It is expected that the proposed EPU will increase the economic viability of VYNPS and lower the probability of early plant retirement. With the increased likelihood that VYNPS will remain operational at least through the

end of the current license term, local employment opportunities will remain available. Early plant retirement would be expected to have a negative impact on the local economy and the community as a whole by reducing tax revenues and limiting local employment opportunities, although these effects could be mitigated by decommissioning activities in the short term.

The Vermont Public Service Board has determined that the EPU will not greatly interfere with the development of the region and will have a minimal impact outside the immediate area of VYNPS. Entergy has not identified any negative socioeconomic impacts associated with the EPU. Therefore, the staff concludes that there are no significant social or economic impacts associated with the proposed action.

#### *Summary*

The proposed EPU would not result in a significant change in non-radiological impacts in the areas of land use, water use, waste discharges, cooling tower operation, terrestrial and aquatic biota, transmission facility operation, or social and economic factors. No other non-radiological impacts were identified or would be expected. Table 2 summarizes the non-radiological environmental impacts of the proposed EPU at VYNPS.

TABLE 2.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use .....	No significant land use modifications; installed temporary office space to support EPU.
Cooling Tower .....	No significant aesthetic impact, slightly larger plume size; no significant increase in noise; no significant fogging or icing.
Transmission Facilities .....	No physical modifications to transmission lines; lines meet shock safety requirements; no changes to right-of-ways; small increase in electrical current would cause small increase in electromagnetic field around transmission lines.
Water Use .....	No configuration change to intake structure; no increased rate of withdrawal; slight increase in water consumption due to increased evaporation; no water use conflicts.
Discharge .....	Increase in water temperature discharged to Connecticut River; will meet thermal discharge limits in current NPDES permit following EPU; no change in chemical or sanitary waste discharges.
Aquatic Biota .....	No additional impact expected on aquatic biota.
Terrestrial Biota .....	Vermont Nongame and Natural Heritage Program found no adverse impact from EPU; no additional impact on terrestrial plant or animal species.
Threatened and Endangered Species.	Three Federally-listed species in Windham County; EPU will have no effect on species.
Social and Economic .....	No significant change in size of VYNPS labor force required for plant operation or future refueling outages; increased production of tax revenues.

#### **Radiological Impacts**

##### *Radioactive Waste Stream Impacts*

VYNPS uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid wastes that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) part 20,

“Standards for Protection Against Radiation”, and 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities”, Appendix I. These radioactive waste streams are discussed in the FES. The proposed EPU would not result in changes in the operation or design of equipment in the gaseous, liquid, or solid waste systems.

##### *Gaseous Radioactive Waste and Offsite Doses*

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the environment, including small quantities of noble gases, halogens, tritium, and particulate material. The gaseous waste management systems include the offgas

system and various building ventilation systems. Entergy estimates that gaseous radioactive effluents will increase following the EPU but will remain within regulatory limits. In the past three years, the peak dose from gaseous effluents at VYNPS was less than 1 millirem (mrem) per year. The increase in gaseous effluents following the EPU is not expected to be more than 20 percent of the current gaseous effluent release, consistent with the EPU. If there were a 20 percent increase from the peak dose of less than 1 mrem per year, the projected dose would still remain well below the dose design objectives of Appendix I to 10 CFR part 50. Therefore, the increase in offsite dose due to gaseous effluent release following the EPU would not be significant.

#### *Liquid Radioactive Waste and Offsite Doses*

During normal operation, the liquid effluent treatment systems process and control the release of liquid radioactive effluents to the environment, such that the doses to individuals offsite are maintained within the limits of 10 CFR part 20 and 10 CFR part 50, Appendix I. The liquid radioactive waste systems are designed to process the waste and then recycle it within the plant as condensate, reprocess it through the radioactive waste system for further purification, or discharge it to the environment as liquid radioactive waste effluent in accordance with State and Federal regulations. Entergy estimates that the volume of liquid radioactive waste generated would increase by 1.2 percent of the current total, following the EPU. This is an increase in the volume of liquid radioactive waste that will require processing, and not an increase in liquid radioactive effluent. The increased volume of liquid radioactive waste is due to the increased frequency of reactor water cleanup filter demineralizer and condensate demineralizer backwashes. The demineralizer backwashes will increase due to an increase in conductivity of the reactor water cleanup system and an increase in feedwater flow following the EPU. Entergy indicated that the percentage increase in liquid radioactive waste generated due to the EPU is within the designed system total volume capacity. There is a very small increase in the volume of liquid radioactive waste generated due to the EPU, but no liquid radioactive waste discharges are expected. Therefore, there would not be a significant environmental impact from the additional volume of liquid radioactive waste generated following the EPU.

#### *Solid Radioactive Wastes*

The solid radioactive waste system collects, processes, packages, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite and permanent disposal. The largest volume of solid radioactive waste at VYNPS is low-level radioactive waste; sources of this include spent ion exchanger resins, filter sludges, air filters, and miscellaneous papers and rags. In 2001, which represents a year of peak solid waste generation, Entergy generated 37 cubic meters (1291 cubic feet) of solid waste. The proposed EPU is expected to increase the amount of reactor water cleanup and condensate demineralizer resins due to increased flow rates for the steam, feedwater, and condensate systems. This is the only expected waste increase. Entergy estimates that the volume of this solid waste could increase by as much as 17.8 percent over the volume of solid waste generated in 2001. Even with such an increase, the expected volume of low-level radioactive waste would be well below the value in the FES.

The proposed EPU would also result in a greater percentage of fuel assemblies being removed from the reactor core and replaced with new fuel assemblies during each refueling outage. Entergy expects the number of fuel assemblies consumed each cycle to increase by 28 percent following the EPU for the remaining term of the license. The additional amount of fuel assemblies consumed will result in greater storage of spent fuel at VYNPS. Entergy estimates that VYNPS can operate to the Fall 2008 refueling outage before exhausting its full-core discharge capability and reaching the capacity of the spent fuel pool, if the plant does not implement the proposed EPU. Assuming the proposed EPU is implemented, Entergy estimates that VYNPS would exhaust its full core discharge capability one cycle earlier (*i.e.*, by the Spring 2007 refueling outage). Regardless of the EPU, Entergy plans to utilize dry cask storage at VYNPS in the near future (pending Vermont Public Service Board approval), to permit continued operations for the full term of the current license. Dry cask storage at VYNPS will be necessary regardless of the EPU, subject to State approval separate from the EPU application, and would not involve a significant increase in the total number of spent fuel assemblies requiring storage over the term of the current license. Accordingly, the NRC staff concludes that there will be no significant environmental impact

resulting from storage of the additional fuel assemblies.

#### *In-Plant Radiation Doses*

The proposed EPU would result in the production of more radioactive material and higher radiation dose rates in some areas at VYNPS. For most areas, radiation doses are unchanged due to the ample margin in the radiation shielding design. Area dose rates inside shielded cubicles can increase as much as 20 percent. However, these areas are not normally occupied during plant operation. Entergy estimates that there will be higher radiation levels in and around the turbine, due to increased steam flow and velocity following the EPU, which will lead to shorter travel times to the turbine and less time for radioactive decay in transit. Therefore, Entergy estimates that the overall increase in radiation level could be as high as 26 percent in those areas with higher steam flow.

The VYNPS FES does not contain an estimate for annual collective occupational radiation dose. The collective occupational dose at VYNPS in 2001 and 2002 was 142 person-rem and 150 person-rem, respectively. The potentially higher dose rates due to the EPU are not expected to increase the annual collective occupational dose by more than 20 percent. Therefore, the annual average collective occupational dose after the EPU is implemented may increase by approximately 30 person-rem.

Individual worker exposure is maintained within acceptable limits by the VYNPS "as low as reasonably achievable" (ALARA) program which controls access to radiation areas. Procedural controls compensate for increased radiation levels to ensure that worker exposure remains ALARA and that the normal operation radiation zones are labeled and controlled for access in accordance with the requirements of 10 CFR part 20 related to allowable worker exposure and access control. Accordingly, occupational doses after the EPU is implemented will remain within acceptable levels and will not result in a significant environmental or radiological dose impact.

#### *Direct Radiation Doses Offsite*

Direct radiation emitted skyward from radionuclides (mainly nitrogen-16) in the main steam system components in the turbine building is scattered back to ground level by molecules in the air and provides another offsite public dose pathway (skyshine) from an operating boiling-water reactor. The licensee routinely monitors whole body dose rate

offsite using high purity germanium detectors, pressurized ion chambers, and thermoluminescent dosimeters. Based on measurements of radiation, the highest direct radiation dose offsite was found at the west side boundary. Entergy estimates that approximately 90 percent of the direct radiation dose at the west side boundary is due to skyshine. The highest annual dose at the west side boundary is 13.4 mrem from skyshine. Following the EPU, skyshine is expected to increase by 26 percent due to the expected increase in the nitrogen-16 source in the turbine building. Assuming a 26-percent increase in direct radiation dose offsite due to skyshine following the EPU, the direct radiation dose offsite at the site boundary would be 16.9 mrem from skyshine. The total maximum direct radiation dose offsite at the site boundary would be 18.6 mrem (16.9 mrem from nitrogen-16 skyshine plus 1.7 mrem from miscellaneous radwaste stored on site).

The annual whole body dose equivalent to a member of the public beyond the site boundary is limited to 25 mrem (0.25 mSv) by 40 CFR part 190. The projected maximum direct radiation dose offsite at VYNPS is within this limit. The licensee will continue to perform surveys as the EPU is implemented to ensure continued compliance with 40 CFR part 190. Therefore, the impact of the EPU on direct radiation dose offsite would not be significant.

#### Postulated Accident Doses

As a result of implementation of the proposed EPU, there is an increase in the source term used in the evaluation of some of the postulated accidents in the FES. The inventory of radionuclides in the reactor core is dependent upon power level; therefore, the core inventory of radionuclides could increase by as much as 20 percent. The concentration of radionuclides in the reactor coolant may also increase by as

much as 20 percent; however, this concentration is limited by the VYNPS Technical Specifications. This coolant concentration is part of the source term considered in some of the postulated accident analyses. Some of the radioactive waste streams and storage systems evaluated for postulated accidents may contain slightly higher quantities of radionuclides than is present under current operations. For those postulated accidents where the source term has increased, the calculated potential radiation dose to individuals at the site boundary (the exclusion area) and in the low population zone would be increased over values presented in the FES, but would be within the doses calculated by the licensee and approved by the NRC staff in a separate license amendment dated March 29, 2005, as discussed below.

In support of the EPU, the licensee submitted a separate license amendment request which proposed a full-scope implementation of an alternative source term (AST) methodology pursuant to 10 CFR 50.67. The licensee performed the radiological analyses that support the AST amendment assuming a reactor power of 1950 MWt which is approximately 102 percent of the proposed EPU power level of 1912 MWt. The NRC approved the AST amendment request on March 29, 2005. As discussed in the safety evaluation for the AST amendment, the NRC staff concluded that the doses, for postulated design-basis accidents under EPU conditions, would meet the acceptance criteria of 10 CFR 50.67 and the guidance in Regulatory Guide 1.183. Therefore, the NRC staff concludes that any increased environmental impact under EPU conditions, in terms of potential increased radiological doses from postulated accidents, would not be significant.

#### Fuel Cycle and Transportation Impacts

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S-3 and S-4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic Environmental Assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S-3 and S-4 to higher burnup cycle and concluded that there is no significant change in environmental impact from the parameters evaluated in Tables S-3 and S-4 for fuel cycles with uranium enrichments up to 5 weight percent Uranium-235 and burnups less than 60,000 megawatt (thermal) days per metric ton of Uranium-235 (MWd/MTU). Entergy has concluded that the fuel enrichment at VYNPS will increase to approximately 4.6 weight percent Uranium-235 as a result of the EPU. Entergy states that the expected core average exposure for the EPU is 35,000 MWd/MTU and the maximum bundle exposure is 58,000 MWd/MTU. The fuel enrichment for the EPU will not exceed 5 weight percent Uranium-235, and the rod average discharge burnup will not exceed 60,000 MWd/MTU. Therefore, the environmental impacts of the EPU will remain bounded by the impacts in Tables S-3 and S-4 and are not significant.

#### Summary

The proposed EPU would not result in a significant increase in occupational or public radiation exposure, would not significantly increase the potential doses from postulated accidents, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. Table 3 summarizes the radiological environmental impacts of the proposed EPU at VYNPS.

TABLE 3.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Gaseous Effluents and Doses.	Up to 20% increase in dose due to gaseous effluents; doses to individuals offsite will remain within NRC limits.
Liquid Effluents and Doses ..	Volume of liquid effluent generated expected to increase by 1.2%; slight increase in the amount of radioactive material in liquid effluent; no discharge of liquid effluent expected, no increase in dose to public.
Solid Radioactive Waste .....	Volume of solid waste expected to increase by 17.8% due to demineralizer resins; within FES estimate; increase in amount of spent fuel assemblies to be stored onsite.
In-plant Dose .....	Occupational dose could increase by 20% overall; will remain within acceptable limits under the VYNPS ALARA program.
Direct Radiation Dose .....	Up to 26% increase in dose rate offsite due to skyshine; expected annual dose continues to meet NRC/EPA limits.
Postulated Accidents .....	Licensee using Alternative Source Term; doses are within NRC limits.
Fuel Cycle and Transportation.	Increase in bundle average enrichment and burnup; impacts stated in Tables S-3 and S-4 in 10 CFR Part 51 are bounding.

### *Alternatives to Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (i.e., the “no-action” alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved, other agencies and electric power organizations may be required to pursue other means of providing electric generation capacity to offset future demand. Such alternatives could include construction of fossil fuel or other generating capacity, or purchase of power from generating facilities outside the service area; such alternatives, however, would likely result in environmental impacts comparable to or greater than those involved in the EPU. For example, fossil fuel plants routinely emit atmospheric pollutants, causing impacts in air quality that are larger than if VYNPS were to provide the same amount of electric generation. Construction and operation of a fossil fuel plant also creates impacts in land use and waste management.

### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the 1972 FES for operation of the VYNPS.

### *Agencies and Persons Consulted*

In accordance with its stated policy, on September 2, 2005, the NRC staff consulted with the Vermont State official, William K. Sherman, of the Department of Public Service, regarding the environmental impact of the proposed action. The State official had no comments.

### **Finding of No Significant Impact**

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee’s application dated September 10, 2003, as supplemented on October 1, and October 28 (2 letters), 2003, January 31 (2 letters), March 4, May 19, July 2, July 27, July 30, August 12, August 25, September 14, September 15, September 23, September 30 (2 letters), October 5, October 7 (2 letters), December 8, and December 9, 2004, and February 24, March 10, March 24, March 31, April 5, April 22, June 2, August 1, August 4, September 10, September 14, September 18, September 28, October 17, October

21, 2005 (2 letters), October 26, and October 29, 2005. Documents may be examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1-800-397-4209, or 301-415-4737, or send an e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 3rd day of November, 2005.

For the Nuclear Regulatory Commission.

**Richard B. Ennis,**

*Senior Project Manager, Plant Licensing Branch B, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 05-22315 Filed 11-8-05; 8:45 am]

**BILLING CODE 7590-01-P**

### **OFFICE OF PERSONNEL MANAGEMENT**

#### **Proposed Collection; Comments Request for Review of an Expiring Information Collection: OPM Form 1203-FX, Occupational Questionnaire and Discontinuation of: OPM Form 1203-EZ, Occupational Questionnaire**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) plans to submit to the Office of Management and Budget a request for the review of an expiring information collection form, Occupational Questionnaire (OPM Form 1203-FX). The Occupational Questionnaire is an optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create applicant records for an automated examining system. The 1203 series was commonly referred to as the “Qualifications and Availability Form C.” OPM has re-titled the series as “Occupational Questionnaire” to fit a more generic need. OPM uses this form to carry out its responsibility for open competitive examining for admission to the competitive service in accordance with

section 3304, of title 5, United States Code.

OPM is not revising the current Occupational Questionnaire. OPM Form 1203-FX is a seven page version that allows the applicant to transmit information via facsimile, mail, or the Internet using a fillable Adobe Acrobat Reader (PDF) file.

Additionally, OPM is discontinuing the three-page version, OPM Form 1203-EZ which was previously approved by OMB in 2002. It was thought at that time the shortened form would reduce the public burden in applying for federal positions, but with the advent of platform changes to OPM’s automated staffing product, the additional system programming needed to recognize the difference between the FX and EZ forms never occurred.

Comments are particularly invited on whether this information is necessary for the proper performance of OPM; whether it will have practical utility; whether OPM’s estimate of public burden in the collection of the information is accurate, based on valid assumptions and methodology; and ways in which the burden of information collection can be minimized on those that respond through the use of appropriate collection technology or other forms of information technology.

The public reporting burden of collecting this information is estimated to vary from 20 to 45 minutes to complete this form including time for reviewing instructions, gathering the data needed, and completing and reviewing entries. The average time to complete the form is 30 minutes.

For copies of this proposal, contact Mary Beth Smith-Toomey at 202-606-8358, fax at 202-418-3251, or e-mail at [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

U.S. Office of Personnel Management, Division of Human Resources Products and Services, Center for Talent Services, ATTN: Charles Conyers, 1900 E Street, NW., Room 1425, Washington, DC 20415-9820, E-mail: [charles.conyers@opm.gov](mailto:charles.conyers@opm.gov).

U.S. Office of Personnel Management.

**Linda M. Springer,**  
*Director.*

[FR Doc. 05-22300 Filed 11-8-05; 8:45 am]

**BILLING CODE 6325-38-P**

**POSTAL SERVICE****Postal Service Board of Governors  
Sunshine Act Meeting**

*Board Votes To Close November 7, 2005, Meeting.* At its meeting on November 1, 2005, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 7, 2005, in Washington, DC. The Board determined that earlier public notice was not possible.

**ITEMS TO BE CONSIDERED:** 1. Opinion and Recommended Decision of the Postal Rate Commission in Docket No. R2005–1.

2. Personnel Matters and Compensation Issues.

**GENERAL COUNSEL CERTIFICATION:** The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:** Requests for information about the meeting should be addressed to the Secretary of the Board, William T. Johnstone, at (202) 268–4800.

**William T. Johnstone,**  
Secretary.

[FR Doc. 05–22507 Filed 11–7–05; 3:51 pm]

**BILLING CODE 7710–12–M**

**POSTAL SERVICE****Postal Service Board of Governors  
Sunshine Act Meeting**

*Board Votes To Close November 16, 2005, Meeting.* At its meeting on November 1, 2005, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 16, 2005, in Washington, DC. The Board determined that earlier public notice was not possible.

**ITEMS TO BE CONSIDERED:** 1. Opinion and Recommended Decision of the Postal Rate Commission in Docket No. R2005–1.

2. Audit and Finance Committee Report and Review and Approval of Year-end Financial Statements.

3. Strategic Planning.

4. Personnel Matters and Compensation Issues.

**GENERAL COUNSEL CERTIFICATION:** The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:**

Requests for information about the meeting should be addressed to the Secretary of the Board, William T. Johnstone, at (202) 268–4800.

**William T. Johnstone,**  
Secretary.

[FR Doc. 05–22508 Filed 11–7–05; 3:51 pm]

**BILLING CODE 7710–12–M**

**SECURITIES AND EXCHANGE  
COMMISSION****Submission for OMB Review;  
Comment Request**

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Extension:

Rule 30b1–5, SEC File No. 270–520, OMB Control No. 3235–0577.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“Act”) the U.S. Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is “Rule 30b1–5 under the Investment Company Act of 1940, Quarterly Filing of Schedule of Portfolio Holdings of Registered Management Investment Companies.”

Rule 30b1–5 under the Investment Company Act of 1940 requires registered management investment companies, other than small business investment companies registered on Form N–5, to file a quarterly report via the Commission’s EDGAR system on Form N–Q, not more than sixty calendar days after the close of each first and third fiscal quarter, containing their complete portfolio holdings.

The Commission estimates that there are 9,850 management investment companies and series that are governed by the rule. The Commission estimates that the annual burden associated with the rule is 1 hour per affected investment company or series. The total burden hours for rule 30b1–5 is 9,850 per year in the aggregate (9,850 responses × 1 hour per response). Estimates of average burden hours are made solely for the purposes of the Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 30b1–5 is mandatory. The information provided under rule 30b1–5 is not kept confidential. 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 28, 2005.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05–22293 Filed 11–8–05; 8:45 am]

**BILLING CODE 8010–01–P**

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34–52733; File No. 81–934]

**Notice of an Application of Global  
Industries, Ltd. Under Section 12(h) of  
the Securities Exchange Act of 1934**

November 4, 2005.

The Securities and Exchange Commission gives notice that Global Industries, Ltd. has filed an application under Section 12(h) of the Securities Exchange Act of 1934, as amended. Global Industries asks the Commission to extend the due date for Global Industries’s Form 10-Q for the quarter ended September 30, 2005 to November 29, 2005. Global Industries states that its principal executive offices are located in Carlyss, Louisiana, which is within one of the Presidentially Declared Disaster Areas for both Hurricane Katrina and Hurricane Rita. In its application, Global Industries asserts that an extension of the due date for Global Industries’s Form 10-Q for the quarter ended September 30, 2005 is necessary due to, among other things, the mandatory evacuations and the extraordinary disruptions to Global Industries’s facilities, personnel, and information technology resources caused by Hurricane Rita.

For a detailed statement of the information presented, all persons are referred to Global Industries's application, which is on file in the Commission's Public Reference Room, Station Place, 100 F Street, NE., Washington, DC 20549.

The Commission also gives notice that any interested person not later than November 25, 2005 may submit to the Commission in writing its views on any substantial facts bearing on the application or the desirability of a hearing thereon.

Any such communication or request may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 81-934 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 81-934. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the application filed with the Commission, and all written communications relating to the application 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. 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 be submitted on or before November 25, 2005.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, the Commission may

issue an order granting the application upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 05-22382 Filed 11-4-05; 3:09 pm]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 27141; 812-13216]**

### **Frank Russell Investment Management Company, et al.; Notice of Application**

November 3, 2005.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as certain disclosure requirements.

*Summary of Application:* Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

*Applicants:* Frank Russell Investment Management Company ("FRIMCo") and Steward Funds, Inc. (the "Company").

*Filing Dates:* The application was filed on July 20, 2005, and amended on November 2, 2005.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 28, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549-9303; Applicants, Gregory J. Lyons, Esq., Frank Russell Company, 909 A Street, Tacoma, Washington 98402.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 551-6813, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F St., NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

### **Applicants' Representations**

1. The Company is organized as a Maryland corporation and is registered under the Act as an open-end management investment company. The Company has two operating series, neither of which will be operated pursuant to the application. An amendment to the Company's registration statement on Form N-1A to register shares of a third series, the Steward Multi-Manager Equity Fund (the "Existing Fund"), has been filed with the Commission. When the registration statement is declared effective, the Existing Fund will implement the manager-of-managers structure as described in the application. Applicants also request relief for any future series of the Company that is advised by FRIMCo that uses the manager-of-managers arrangement described in the application (each such series, together with the Existing Fund, a "Fund").<sup>1</sup>

2. FRIMCo is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and will serve as investment adviser to the Existing Fund pursuant to an investment advisory agreement ("Advisory Agreement") with the Existing Fund. The Advisory Agreement has been approved by the Existing Fund's board of directors ("Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Existing Fund or FRIMCo (the "Independent Directors"), as well as by the sole initial shareholder of the Existing Fund.

3. Under the terms of the Advisory Agreement, FRIMCo will provide

<sup>1</sup> All existing entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application. If the name of any Fund contains the name of a Money Manager (as defined below), the name of FRIMCo (e.g., "Frank Russell"), or the name of an entity controlling, controlled by, or under common control with FRIMCo that serves as the primary adviser to the Fund, will precede the name of the Money Manager.



investment advisory services to the Existing Fund, supervise the investment program for the Existing Fund, and has the authority, subject to Board approval, to enter into investment subadvisory agreements ("Portfolio Management Agreements") with one or more subadvisers ("Money Managers"). Each Money Manager is registered under the Advisers Act. FRIMCo will monitor and evaluate the Money Managers and recommend to the Board their hiring, retention or termination. Money Managers recommended to the Board by FRIMCo are selected and approved by the Board, including a majority of the Independent Directors. Each Money Manager has discretionary authority to invest the assets or a portion of the assets of the Existing Fund. FRIMCo compensates each Money Manager out of the fees paid to FRIMCo under the Advisory Agreement.

4. Applicants request an order that would (a) permit FRIMCo to hire Money Managers and materially amend Portfolio Management Agreements without obtaining shareholder approval and (b) grant relief from certain disclosure requirements concerning fees paid to the Money Managers. The requested relief will not extend to any Money Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or FRIMCo, other than by reason of serving as a Money Manager to one or more of the Funds ("Affiliated Money Manager").

5. An exemption is requested to permit a Fund to disclose (as both a dollar amount and as a percentage of the Fund's net assets): (a) The aggregate fees paid to FRIMCo and any Affiliated Money Managers; and (b) the aggregate fees paid to Money Managers other than Affiliated Money Managers ("Aggregate Fee Disclosure"). For any Fund that employs an Affiliated Money Manager, the Fund will provide separate disclosure of any fees paid to the Affiliated Money Manager.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N-1A

requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N-SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Money Managers.

5. Regulation S-X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6-07(2)(a), (b), and (c) of Regulation S-X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on FRIMCo's experience to select one or more Money Managers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of an investor in the Fund, the role of the Money Managers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Portfolio Management Agreement would impose costs and unnecessary delays on

the Funds, and may preclude FRIMCo from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Portfolio Management Agreement with an Affiliated Money Manager will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

8. Applicants assert that some Money Managers use a "posted" rate schedule to set their fees. Applicants state that while Money Managers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief would allow FRIMCo to negotiate more effectively with each individual Money Manager.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the 1940 Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that FRIMCo has ultimate responsibility (subject to oversight by the Board) to oversee the Money Managers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Money Manager, the affected Fund shareholders will be furnished all information about the new Money Manager that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Money Manager. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Money Manager with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as



modified by the order to permit Aggregate Fee Disclosure.

4. FRIMCo will not enter into a Portfolio Management Agreement with any Affiliated Money Manager without that agreement, including the compensation to be paid thereunder, being approved by Fund shareholders.

5. The Board of each Fund will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act by the compliance date for the rule ("Compliance Date"). Prior to the Compliance Date, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then existing Independent Directors.

6. When a Money Manager change is proposed for a Fund with an Affiliated Money Manager, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which FRIMCo or the Affiliated Money Manager derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Directors. The selection of such counsel will be within the discretion of the then existing Independent Directors.

8. FRIMCo will provide the Board, no less frequently than quarterly, with information about the profitability of FRIMCo on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Money Manager during the applicable quarter.

9. Whenever a Money Manager is hired or terminated, FRIMCo will provide the Board with information showing the expected impact on the profitability of FRIMCo.

10. FRIMCo will provide general investment management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval of the Board, will: (i) Set each Fund's overall investment strategies, (ii) evaluate, select and recommend Money Managers to manage all or a part of a Fund's assets, (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Money Managers, (iv) monitor and evaluate the performance of Money Managers, and (v) implement procedures reasonably designed to ensure that the Money Managers comply with each Fund's

investment objective, policies and restrictions.

11. No director or officer of a Fund, or director or officer of FRIMCo, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Money Manager, except for (a) ownership of interests in FRIMCo or any entity that controls, is controlled by, or is under common control with FRIMCo, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Money Manager or an entity that controls, is controlled by or is under common control with a Money Manager.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 05-22332 Filed 11-8-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of Cameron International, Inc.; Order of Suspension of Trading

November 7, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning a recent tender offer or other possible change in ownership of Cameron International, Inc. ("Cameron"), quoted on the Over the Counter Bulletin Board under the ticker symbol CMRN. Also, questions have arisen regarding a recent increase in the share price from \$.05 to \$.90 during a period when no material information about the company was made public.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. e.s.t. November 7, 2005, through 11:59 p.m. e.s.t., on November 21, 2005.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 05-22450 Filed 11-7-05; 11:57 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52724; File No. SR-CHX-2005-26]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Execution of Mixed Lot Cross and Cross With Size Orders in the Electronic Book

November 2, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2005, the Chicago Stock Exchange, Incorporated ("CHX" 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 Exchange has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend CHX Article XXA, Rule 2, to permit the execution of mixed lot cross and cross with size orders in the electronic book. The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in [brackets].

\* \* \* \* \*

#### ARTICLE XXA

##### Operation of the Electronic Book

\* \* \* \* \*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Exchange has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

## Eligible Orders

RULE 2. (a) *Except for cross and cross with size orders, which may be sent to the electronic book in mixed lot increments, a[A]ll orders sent to the electronic book must be round-lot limit orders, specifically designated in the manner specified by the Exchange to confirm that they are eligible for trading in the electronic book.*

\* \* \* \* \*

## 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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange recently implemented a fully-automated electronic book for the display and execution of orders in securities that are not assigned to a specialist.<sup>6</sup> These new rules replace the Exchange's manual cabinet and lead market maker trading procedures with a new fully automated electronic book that displays and matches eligible limit orders in eligible securities, without the participation of a specialist or lead market maker.

The electronic book was originally designed to accept only round lot orders. The Exchange now believes that it would be appropriate to allow CHX participants to submit mixed lot cross and cross with size orders for immediate execution in the electronic book. "Cross" and "cross with size" orders permit the handling of orders to buy and sell the same security—within the electronic book, these orders are automatically executed if they meet the requirements for these types of orders, but are immediately cancelled if they do

not meet applicable requirements.<sup>7</sup> The Exchange believes that some of its participants would welcome the opportunity to submit mixed lot cross and cross with size orders to the electronic book. The Exchange believes that this relatively minor change to Exchange systems will permit its participants to execute additional transactions in this automated trading facility, but will not have any impact on the protection of investors or the public interest.

#### 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).<sup>8</sup> The CHX believes the proposal is consistent with section 6(b)(5) of the Act<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the

Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>12</sup> the Exchange provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>13</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay will allow Exchange participants to make immediate use of the electronic book functionality for their mixed lot cross and cross with size orders, which may permit Exchange participants to access potentially larger pools of liquidity located in the electronic book. For the reasons stated above, the Commission finds good cause to designate that the proposal is operative immediately.<sup>14</sup>

## IV. 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:

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> *Id.*

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> See Securities Exchange Act Release No. 52094 (July 21, 2005), 70 FR 43913 (July 29, 2005). The Exchange has rolled out this technology for the trading of Nasdaq/NM securities and anticipates implementing its use for the trading of listed securities within the next two weeks. Telephone call between Ellen Neely, President, CHX and Sara Gillis, Attorney, Division of Market Regulation, Commission on October 27, 2005.

<sup>7</sup> A "cross" order is an order to buy and sell the same security at a specific price that is better than the best bid and offer displayed in the electronic book and, for listed securities, equal to or better than the NBBO. A "cross with size" order is an order to buy and sell at least 25,000 shares of the same security (a) at a price equal to or better than the best bid or offer displayed in the electronic book and, for listed securities, equal to or better than the NBBO; (b) where the size of the order is larger than the aggregate size of all interest displayed in the electronic book at that price; and (c) where neither side of the order is for the account of the CHX participant sending the order to the electronic book. See CHX Rules, Article XXA, Rule 2(c) (3) and (4).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2005-26 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File No. SR-CHX-2005-26. 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 Exchange. 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 No. SR-CHX-2005-26 and should be submitted on or before November 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05-22334 Filed 11-8-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52722; File No. SR-NASD-2005-124]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Repeal NASD Rule 6440(f)

November 2, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 24, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD filed this proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i)<sup>3</sup> of the Act, and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to repeal NASD Rule 6440(f) in light of proposed rule changes that have recently been approved by the Commission expanding market order protection and limit order protection to exchange-listed securities.<sup>6</sup> NASD proposes to make the proposed rule change operative on January 9, 2006. Below is the text of the proposed rule change. Proposed deletions are in brackets.

\* \* \* \* \*

#### 6440. Trading Practices

- (a) through (e) No change.
- [(f)(1) No member shall:]
- [(A) personally buy or initiate the purchase of an eligible security for its

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Rule 19b-4(f)(6) allows for a proposed rule change to take effect upon filing with the Commission provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. NASD complied with this pre-filing requirement. See e-mail from Stephanie Dumont, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, dated October 11, 2005.

<sup>6</sup> See footnotes 8 and 9, *infra*.

own account or for any account in which it or any person associated with it is directly or indirectly interested, while such member holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer; or]

[(B) sell or initiate the sale of any such security for any such account, while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.]

[(2) No member shall:]

[(A) buy or initiate the purchase of any such security for any such account, at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer; or]

[(B) sell or initiate the sale of any such security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.]

[(3) The provisions of this paragraph shall not apply:]

[(A) to any purchase or sale of any such security in an amount less than the unit of trading made by a member to offset odd-lot orders for customers,]

[(B) to any purchase or sale of any such security upon terms for delivery other than those specified in such unexecuted market or limited price order,]

[(C) to any unexecuted order that is subject to a condition that has not been satisfied.]

[(D) to any purchase or sale for which a member has negotiated specific terms and conditions applicable to the acceptance of limit orders that are:]

[(i) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or]

[(ii) for 10,000 shares or more, unless such orders are less than \$100,000 in value.]

(g) through (j) redesignated as (f) through (i).

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

<sup>15</sup> 17 CFR 200.30-3(a)(12).

rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASD Rule 6440(f)(1) prohibits a member from personally buying (selling) an exchange-listed security<sup>7</sup> for its own account while such member holds an unexecuted market order to buy (sell) such security for a customer. Similarly, NASD Rule 6440(f)(2) prohibits a member from buying (selling) an exchange-listed security for its own account while such member holds an unexecuted limit order to buy (sell) such security for a customer. NASD seeks to repeal NASD Rule 6440(f) in light of two proposed rule changes that have recently been approved by the Commission that also restrict a member's trading when holding customer market and limit orders in exchange-listed securities.

Specifically, on August 4, 2005, the Commission approved proposed rule change SR-NASD-2004-089,<sup>8</sup> which, among other things, expands the application of NASD Interpretative Material (IM) 2110-2, Trading Ahead of Customer Limit Order (commonly referred to as the "Manning Rule") to exchange-listed securities. NASD Interpretative Material 2110-2 generally prohibits a member from trading for its own account at prices that would satisfy a customer's limit order, unless the member immediately thereafter executes the customer's limit order. In addition, on August 9, 2005, the Commission approved proposed rule change SR-NASD-2004-045 adopting NASD Rule 2111, which prohibits a member that accepts and holds a customer market order from trading for its own account at prices that would satisfy the customer market order in a Nasdaq or exchange-listed security, unless the member

immediately thereafter executes the customer market order.<sup>9</sup>

NASD believes that NASD Rule 6440(f) overlaps and is generally duplicative of the above-referenced rule changes.<sup>10</sup> Accordingly, NASD is proposing to repeal NASD Rule 6440(f) to ensure consistency in the application of limit order and market order protection and to eliminate potential confusion as to members' obligations with respect to these orders in exchange-listed securities.

NASD has filed the proposed rule change for immediate effectiveness. The implementation date will be January 9, 2006, such that both SR-NASD-2004-045 and SR-NASD-2004-089 will be in effect by that date.

2. Statutory basis

NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will ensure consistency in the treatment of customer limit orders and customer market orders for exchange-listed securities and will enhance the integrity of the market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD 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*

NASD has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A)(i)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder. NASD has complied with this pre-filing requirement.<sup>14</sup> NASD proposes to make the proposed rule change operative on January 9, 2006 to coincide with the implementation of SR-NASD-2004-045 and SR-NASD-2004-089.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-124 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-124. 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

<sup>7</sup> NASD Rule 6440(f) applies to over-the-counter transactions in "eligible securities," which are defined in NASD Rule 6410(d) as "all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange."

<sup>8</sup> See Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005)(SR-NASD-2004-089).

<sup>9</sup> See Securities Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005)(SR-NASD-2004-045).

<sup>10</sup> In SR-NASD-2004-045 and SR-NASD-2004-089, NASD specifically noted its intent to repeal NASD Rule 6440(f) in light of the overlap between the proposed rule changes and NASD Rule 6440(f).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> See footnote 5, *supra*.

<sup>15</sup> See discussion footnotes 8-10, *supra*.

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 offices of NASD. 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-NASD-2005-124 and should be submitted on or before November 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 05-22333 Filed 11-8-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52727; File No. SR-NASD-2005-121]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Rule 3012, Rule 3013, and IM-3013

November 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 14, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the

proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 3012 (Supervisory Control System), Rule 3013 (Annual Certification of Compliance and Supervisory Processes), and IM-3013 (Annual Compliance and Supervision Certification) to allow members, by no later than April 1, 2006, to submit the initial annual report required by Rule 3012 and to execute the initial annual certification required by Rule 3013 and IM-3013. Below is the text of the proposed rule change. Proposed new language is in *italics*.

\* \* \* \* \*

#### 3012. Supervisory Control System

##### (a) General Requirements

(1) Each member shall designate and specifically identify to NASD one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the member's senior management no less than annually, a report<sup>5</sup> detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

##### (2) No change.

<sup>5</sup> Rule 3012 became effective on January 31, 2005, which would require a member's first Rule 3012 report to be submitted by no later than January 31, 2006 and at least annually thereafter; however, a member may elect to submit its first Rule 3012 report by no later than April 1, 2006. Importantly, a member's first Rule 3012 report must encompass the period from January 31, 2005 (the effective date of Rule 3012) up to the submission date (or a reasonable period of time immediately preceding the submission date). Each ensuing Rule 3012 report may not be for a period greater than 12 months from the date of the preceding Rule 3012 report (but may be for a shorter time period if a member elects to prepare a report more frequently than annually).

##### (b) Dual Member No change.

\* \* \* \* \*

#### Rule 3013. Annual Certification of Compliance and Supervisory Processes

(a) Designation of Chief Compliance Officer No change.

##### (b) Annual Certification.

Each member shall have its chief executive officer (or equivalent officer) certify annually,<sup>6</sup> as set forth in IM-3013, that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer has conducted one or more meetings with the chief compliance officer in the preceding 12 months to discuss such processes.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Rule 3013 requires that each member's chief executive officer ("CEO"), or other equivalent officer, certify annually according to the terms set forth in IM-3013 that the member has in place processes to establish, maintain, review, test and modify its written supervisory procedures. The first annual certification is currently due by December 1, 2005.<sup>7</sup> Before a CEO can complete the annual certification requirement, IM-3013 requires, among other things, that the CEO, chief

<sup>6</sup> Rule 3013 and IM-3013 became effective on December 1, 2004, which would require a member's first certification to be executed by December 1, 2005 and annually thereafter; however, a member may elect to execute its first certification by no later than April 1, 2006 and annually thereafter.

<sup>7</sup> Each ensuing annual certification must be effected no later than on the anniversary date of the previous year's certification. See IM-3013, n.1.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4.

compliance officer ("CCO"), and any other necessary officers review a report that evidences the member's processes.

Rule 3012(a)(1) requires, among other things, that each member submit to its senior management no less than annually a report detailing its supervisory controls system that will test and verify the adequacy of its supervisory procedures, the summary of the test results, and any additional or amended supervisory procedures created in response to the test results. Currently, members must complete and submit the report by January 31, 2006 and at least annually thereafter.<sup>8</sup>

Since the adoption of these rules, NASD has received a number of inquiries from members regarding whether the reports required by Rule 3012 and IM-3013 could be combined. Although NASD has advised members that they may combine the Rule 3012 report with the report required by IM-3013 as long as all of the required elements of the respective reports are addressed and clearly identified, members have indicated that it would be difficult to combine the reports since the first annual certification required by Rule 3013 must be executed by December 1, 2005 (and thus the related report must be prepared in advance of, but reasonably close in time to, such execution), while the Rule 3012 report is not required to be submitted until January 31, 2006.

In addition, dual members have inquired whether they can combine the reports required by Rule 3012 and IM-3013 with the Annual Report required by NYSE Rule 342.30, which is due by April 1st of each year. As support for their request, dual members have noted that the NYSE Rule 342.30 Annual Report mandates similar, though not identical, requirements as the Rule 3012 report. Dual members have also noted that IM-3013 specifically provides that the IM-3013 report may be combined with any other compliance or other similar report required by another self-regulatory organization. Dual members assert that being able to complete one report instead of being required to complete three reports that could cover overlapping topics and issues would prevent the duplication of significant resources. However, because of the disparate dates by which the three reports must be completed, the dual

members have indicated that it would be nearly impossible to combine the reports.<sup>9</sup>

Accordingly, NASD is filing this proposed rule change to address those issues. Specifically, the proposed rule change will amend Rule 3012 to provide that a member may submit its initial Rule 3012 report by no later than April 1, 2006. The proposed rule change explains that due to Rule 3012's January 31, 2005 effective date, a member choosing to rely on any date after January 31, 2005 through April 1, 2006 as the submission deadline for its initial Rule 3012 report will have to encompass the period from January 31, 2004 up to that submission date (or a reasonable period of time immediately preceding the submission date). Each ensuing Rule 3012 report must encompass the 12 months following the previous Rule 3012 report (or such shorter time period if a member elects to prepare a report more frequently than annually).

Additionally, the proposed rule change will amend Rule 3013 and IM-3013 to provide that a member may execute its first annual certification by no later than April 1, 2006 and annually thereafter. A member should keep in mind that the report required by IM-3013 that evidences the member's processes must be prepared in advance of, but reasonably close in time to, April 1, 2006.

As a result of these proposed changes members will be able, if they so choose, to combine the respective reports, provided the single report clearly identifies and addresses all of the requirements set forth in Rule 3012, Rule 3013 and IM-3013. The proposed rule change will also allow dual members to comply with the respective reporting requirements of Rule 3012, Rule 3013, IM-3013, and NYSE Rule 342.30 without undue duplication of effort.

NASD has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 5-day pre-filing requirement and the 30-day period for the proposed rule change to become operative, in

order to allow NASD members to have as much time as possible to adjust their procedures to the new submission dates for the initial Rule 3012 report and the initial certification required by Rule 3013 and IM-3013. The effective date and the implementation date will be the date of filing, October 14, 2005.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that synchronizing the date of the report required by Rule 3012 and the date of execution of the certification required by Rule 3013 and IM-3013 will reasonably serve to minimize duplication of effort on the part of members, while still ensuring the protection of investors.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the proposal (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of filing of the

<sup>8</sup> See Notice to Members 04-71 (October 2004) (announcing, among other things, the effective date of January 31, 2005); see also Transcript of December 16, 2004 Call-in Workshop ("Transcript") reminding members that Rule 3012 Report is due within one year of the January 31, 2005 effective date and at least annually thereafter. The Transcript is available at [www.nasd.com/SupervisoryControl](http://www.nasd.com/SupervisoryControl).

<sup>9</sup> It should be noted that Rule 3012(b) provides that any dual member electing to comply with the substantially similar requirements of the NYSE shall be deemed in compliance with the provisions of Rule 3012. A dual member must comply with all of the NYSE's substantially similar requirements to be considered in compliance with Rule 3012. Accordingly, any dual member electing to comply with the substantially similar requirements of the NYSE would comply with Rule 3012's reporting requirement by completing the NYSE Rule 342.30 Annual Report. The member, however, would still be required to complete the report required by IM-3013 prior to the initial certification date required by Rule 3013 and IM-3013.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

proposed rule change, or such shorter time as designated by the Commission.

NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>12</sup> Waiving the pre-filing requirement and accelerating the operative date will merely permit the immediate implementation of changes that will allow firms to more efficiently discharge their reporting obligations. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-121 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-121. 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/>

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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 the File Number SR-NASD-2005-121 and should be submitted on or before November 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-22335 Filed 11-8-05; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52713; File No. SR-NSX-2005-08]

#### Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Manual Processing Fee

November 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2005, National Stock Exchange<sup>SM</sup> ("Exchange" or "NSX<sup>SM</sup>") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 21, 2005, the Exchange filed Amendment No. 1 to the proposed rule

change.<sup>3</sup> On October 31, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Exchange filed the proposed rule change pursuant Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX proposes to amend its manual processing fee for crosses and meets phoned into the NSX Control Room and the book fees charged to its Designated Dealers.

The text of the proposed rule change is reproduced below. Additions are indicated by *italics*. Deletions are contained within the brackets.

#### RULES OF NATIONAL STOCK EXCHANGE

\* \* \* \* \*

#### CHAPTER XI

##### Trading Rules

\* \* \* \* \*

#### Rule 11.10 National Securities Trading System Fees

- A. Trading Fees  
(a)-(d) No change.  
(e) Crosses and Meets  
(1)-(3) No change.  
(4) Users executing crosses and meets in Tape A, B or C securities through the Exchange's System Supervisory Center shall be charged [\$15 per contra-party] *\$.0025 per share*, up to a maximum of \$75 per side of transaction. This transaction fee shall be in lieu of any transaction fee otherwise applicable under Paragraphs (A)(e)(1) through (A)(e)(3) above.  
(f)-(l) No change.  
(m) DD Issue/Book Fees. Designated Dealers will be charged a monthly book fee based on the following incremental schedule:

Number of issues	Fee per issue
0 to 150 .....	\$30.00
151 to 300 .....	20.00
301 to 500 .....	15.00

<sup>3</sup> In Amendment No. 1, the Exchange (1) clarified who may phone orders into the NSX Control Room, (2) defined "cross" and "meet," and (3) made other technical changes.

<sup>4</sup> In Amendment No. 2, the Exchange made a correction to the rule text.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>27</sup> 17 CFR 240.19b-4.



Number of issues	Fee per issue
501 and higher .....	2.00

*Notwithstanding the above, any Designated Dealer that has been approved as a designated dealer in excess of 500 issues will be charged a monthly book fee based on the number of issues it traded for the prior month.*

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Currently, orders can be entered on the Exchange either via an electronic connection or by phoning the NSX Control Room.<sup>7</sup> For orders phoned into the NSX Control Room, NSX currently charges a manual processing fee of \$15 per contra-party, with a cap of \$75 per side, on every cross or meet.<sup>8</sup> The Exchange has been billing on a per contra basis because the number of contra-parties determines the time it takes to process a trade and the cost of the trade. The Exchange's member firms, however, are more accustomed to being billed on a per share basis and have asked the Exchange to consider billing on such basis to keep firm billing in line with all of the other business lines. The Exchange believes that the implementation of this manual processing fee on a per share basis is reasonable and ensures that each NSX

member pays an equitable share of the costs associated with operating the Exchange.

With respect to the book fee, the Exchange currently charges a monthly fee for the number of registered issues for each Designated Dealer. Some firms are beginning to change their business models to solicit fewer, larger size orders across a significant number of securities. This new model requires the firms to be registered in a significant number of securities to attract order flow even though they may not receive order flow for some time. The Exchange believes that the proposed change would initially reduce the cost to these firms while they are expanding their coverage of securities by charging the per issue fee based upon the issues that are traded for any Designated Dealer that has registered in excess of 500 issues. The Exchange believes that the implementation of this proposed fee would encourage Designated Dealers to trade more issues and be charged on the basis of what they actually traded.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(4),<sup>10</sup> in particular, in that it is designed to provide an equitable allocation of reasonable dues, fees, and other charges. The Exchange believes that the proposed change is also consistent with Section 6(b)(5) of the Act<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Exchange believes that the proposed change would create incentives for NSX members to electronically connect to the Exchange's trading system, thereby increasing efficiency and competition, which, in turn, would enhance the national market system.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder, because it involves a member due, fee, or other charge. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

## IV. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2005-08 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-9303.

All submissions should refer to File No. SR-NSX-2005-08. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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

<sup>7</sup> Orders may be phoned into the NSX Control Room (or the Exchange's Systems Supervisory Center) by "Users." "Users" are defined in NSX Rule 11.9(a)(7) as "a Member of the Exchange or an Approved Dealer. Access Participant Members are considered to be Users in their limited capacity of executing transactions through the facilities of a Proprietary Member."

<sup>8</sup> A "cross" is a transaction in which one Member represents both the buyer and the seller of a security. A "meet" is a transaction in which a Member represents the buyer or seller of a security and other Members represent the contra parties.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on October 31, 2005, the date the Exchange filed Amendment No. 2 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).



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, 100 F Street NE., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. 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-NSX-2005-08 and should be submitted on or before November 30, 2005.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.<sup>15</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-22294 Filed 11-8-05; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. OST-2005-22902]

### Notice of Request for Extension of Currently Approved Information Collection

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension without change for a currently approved information collection.

**DATES:** Comments on this notice must be received by January 9, 2006.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means, identified by DOT DMS Docket Number OST-2005-22902:

- (1) By mail to the Docket Management Facility, U.S. Department of

Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. [It is important to note that because of current security procedures affecting the U.S. Mail, other means (e.g., FedEx, UPS) may be faster];

- (2) By delivery to 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.
- (3) By fax to the Docket Management Facility at (202) 493-2551; or
- (4) By electronic means through the web site for the Docket Management System at: <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments to the docket will be available for inspection or copying at 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. The public may also review docketed comments electronically at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia A. Roscoe, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, at the address listed above. Telephone: (202) 366-9764.

### SUPPLEMENTARY INFORMATION:

**Title:** Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

**OMB Control Number:** 2105-0009.

**Type of Request:** Extension without change for a currently approved information collection.

**Abstract:** The collection of information obtained by the Advisory Committee Candidate Biographical Information Request form enables Department officials to review the qualifications of individuals who wish to serve on Department-sponsored advisory committees and the qualifications of persons who have been recommended to serve. The collection provides uniform data for each individual and enables DOT to comply with the Federal Advisory Committee Act (Pub. L. 92-463) (5 U.S.C. App.) which requires that advisory committee membership be balanced.

A number of DOT's advisory committees were created by statute and have statutory requirements for education, experience, or expertise. The data collection enables DOT to comply with such membership requirements, by providing information form which

officials may determine which individuals meet specific qualification standards for particular advisory committees and for particular positions within a committee. In fact, some statutory committees require very narrow and specific expertise for each position on the committee, which can be ascertained by reviewing the Advisory Committee Candidate Biographical Request form.

Finally, the data collection allows officials to retain a file of interested applicants. As vacancies occur on specific advisory committees, the applications and qualifications can be reviewed for possible placement.

In the absence of the data collection, officials would have to contact by telephone or by letter each person who expressed an interest or who was recommended for an advisory committee position to determine his/her interest, education, experience, or expertise. This would be a more time-consuming and costly data collection effort which would have to be repeated if the individual were to be considered at a later time for vacancies on other advisory committees.

**Respondents:** Individuals who have contacted DOT to indicate interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

**Estimated Number of Respondents per year:** 100.

**Total Burden:** 35 hours.

This information collection is available for inspection at the Office of the Executive Secretariat, Room 10205, Office of the Secretary, DOT, at the above address.

**Comments are invited on:** (a) Whether the continued collection of the information is necessary for the proper performance of the functions of the Department, (b) the accuracy of the Department's estimate of the burden of the current information collection, (c) ways to enhance the quality, utility, and clarity of the information collection, (c) ways to enhance the quality, utility, and clarity of the information being collected and (d) ways to minimize the burden of the collection techniques or other forms of information technology.

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

<sup>15</sup> 17 CFR 200.30-3(a)(12).

Issued in Washington, DC on November 3, 2005.

**Michael C. Dannenhauer,**  
*Director, Executive Secretariat.*

[FR Doc. 05-22356 Filed 11-8-05; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed the Week Ending October 28, 2005

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2005-22825.

*Date Filed:* October 24, 2005.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC23/TC123 Europe-South West Pacific. Geneva & Teleconference, 15-16 September 2005. (Memo 0099).

*Intended effective date:* 1 December 2005.

*Docket Number:* OST-2005-22848.

*Date Filed:* October 27, 2005.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC23 Mail Vote 462. Between Europe and South Asian Subcontinent. Geneva & Teleconference, 15-16 September 2005. (Memo 0141).

*Intended effective date:* 1 December 2005.

**Renee V. Wright,**

*Program Manager, Docket Operations,  
Federal Register Liaison.*

[FR Doc. 05-22354 Filed 11-8-05; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

#### Agency Information Collection; Activity Under OMB Review; National Ferry Database

**AGENCY:** Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice

announces that the Information Collection Request (ICR) described below is being forwarded to the Office of Management and Budget (OMB) for approval for a new information collection related to the Nation's ferry operations. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on August 30, 2005 (70 FR 51409) and the comment period ended on October 30, 2005. The 60-day notice produced no comments.

**DATES:** Written comments should be submitted by December 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. June Taylor Jones, Passenger Travel Program Manager, Room 3430, RITA, BTS, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone (202) 366-4743, Fax (202) 493-0568 or e-mail [june.jones@dot.gov](mailto:june.jones@dot.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* National Ferry Study.

*Type of Request:* Approval of a new information collection.

*OMB Control Number:* New.

*Affected Public:* Ferry operators nationwide.

*Number of Respondents:* 300.

*Number of Responses:* 300.

*Total Annual Burden:* 100 hours (Average estimate of 20 minutes to complete the survey for each of 300 resulting in a total of 6000 minutes or 100 hours).

*Abstract:* The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 known ferry operators. The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU; H.R. 3, Section 1801(e)) requires that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing information on routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful. Data collection will rely on a written survey. An electronic version of the questionnaire will also be available to respondents on request. Data will be collected from the entire population of ferry operators (estimate 300 or less). The survey will ask respondents to

provide information on: (1) Points served; (2) amount and source of Federal, State, and/or local funds used in the past 24 months; (3) type of ownership; (4) number of passengers and vehicles carried in the past 12 months; (5) any new routes expected to be added within the next five years; and (6) highways that are connected by the ferries. It is estimated that the survey will take, on average, 20 minutes to complete for a total burden of 100 hours (300 respondents\*20 minutes/60 = 100 hours).

The National Ferry Database may collect business sensitive information. The confidentiality of these data will be protected under 49 CFR 7.17. In accordance with this regulation, only statistical and non-sensitive business information will be made available through publications and public use data files. The statistical public use data are intended to provide an aggregated source of information on ferry boat operations nationwide.

**ADDRESSES:** The agency seeks public comments on its proposed information collection. Comments should address whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC on this 2nd day of November, 2005.

**William Bannister,**

*Assistant Director, Office of Advanced Studies, Research and Advanced Technology Administration, Bureau of Transportation Statistics, Department of Transportation.*

[FR Doc. 05-22355 Filed 11-8-05; 8:45 am]

BILLING CODE 4910-HY-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34658]

#### The Alaska Railroad Corporation— Petition for Exemption To Construct and Operate a Rail Line Between Eielson Air Force Base (North Pole) and Fort Greely (Delta Junction), AK

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Correction of Due Date for Comments on Draft Scope of Study for Environmental Impact Statement and Potential Environmental Effects of the Project.

**SUMMARY:** On November 1, 2005, the Surface Transportation Board issued a Notice of Intent to prepare an Environmental Impact Statement (EIS), notice of availability of a draft Scope of Study for the EIS, notice of scoping meetings, and request for comments for the subject proceeding that contained an inadvertent error (see 70 FR 65976). The due date for comments was identified as January 13, 2005. The correct date is January 13, 2006. Please revise your copies accordingly.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 05-22321 Filed 11-8-05; 8:45 am]

**BILLING CODE 4915-00-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34771]

#### **Union Pacific Railroad Company and Wichita Terminal Association— Trackage Rights Exemption—BNSF Railway Company**

BNSF Railway Company (BNSF) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP), and to the exercise of those rights by UP's agent, Wichita Terminal Association (WTA), over BNSF's line of railroad between BNSF milepost 209.3 and BNSF milepost 212.5, a distance of approximately 3.2 miles in Wichita, KS.

The transaction was scheduled to be consummated on November 1, 2005. The purpose of the trackage rights is to allow UP access to the Ralston Purina Plant (RPP) (its successors and assigns), located in Wichita. UP has advised that, under the agreement, UP may provide service to RPP or use WTA as its agent to exercise the rights granted and to provide service to RPP.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34771, 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 Robert T. Opal, General Commerce Counsel, Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 2, 2005.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 05-22211 Filed 11-8-05; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### **Submission for OMB Review; Comment Request**

November 2, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before December 9, 2005 to be assured of consideration.

#### **Alcohol and Tobacco Tax and Trade Bureau (TTB)**

*OMB Number:* 1513-0002.

*Type of Review:* Extension.

*Title:* Personnel Questionnaire

Alcohol and Tobacco Products.

*Form:* TTB form F 5000.9.

*Description:* The information listed on TTB F 5000.9, Personnel Questionnaire, enables TTB to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for the business and criminal record. If the applicant is found not to be qualified the permit may be denied.

*Respondents:* Business or other for-profit.

*Estimated Total Burden Hours:* 10,000 hours.

*OMB Number:* 1513-0020.

*Type of Review:* Extension.

*Title:* Application for Certification/Exemption of Label/Bottle approval under the Federal Alcohol Administration.

*Form:* TTB form F 5100.31.

*Description:* The Federal Alcohol Administration Act regulates the labeling of alcohol beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcohol beverages.

*Respondents:* Business or other for-profit.

*Estimated Total Burden Hours:* 41,238 hours.

*OMB Number:* 1513-0035.

*Type of Review:* Extension.

*Title:* Inventory-Export Warehouse Proprietor.

*Form:* TTB form F 5220.3.

*Description:* TTB F 5220.3 is used by export warehouse proprietors to record inventories that are required by law and regulations.

*Respondents:* Business or other for-profit.

*Estimated Total Burden Hours:* 50 hours.

*OMB Number:* 1513-0026.

*Type of Review:* Extension.

*Title:* Claim for Drawback of Tax on Tobacco Products, Cigarette Papers and Cigarette Tubes.

*Form:* TTB form F 5620.7.

*Description:* TTB F 5620.7 documents taxpaid tobacco products, cigarette papers and cigarette tubes that were exported to a foreign country, Puerto Rico, or Virgin Islands. This form is used by taxpayers to claim drawback for tax paid on exported products.

*Respondents:* Business or other for-profit.

*Estimated Total Burden Hours:* 144 hours.

*Clearance Officer:* Frank Foote, (202) 927-9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

**Michael A. Robinson,**

*Treasury PRA Clearance Officer.*

[FR Doc. 05-22338 Filed 11-8-05; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 2, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**Dates:** Written comments should be received on or before December 9, 2005 to be assured of consideration.

#### Internal Revenue Service (IRS)

**OMB Number:** 1545-1788.

**Type of Review:** Extension.

**Title:** Taxpayer Advocacy Panel (TAP) Membership Application.

**Form:** IRS form 13013C.

**Description:** An application to volunteer to serve on the Taxpayer Advocacy Panel, an advisory panel to the IRS.

**Respondents:** Business or other for-profit, Individual or households.

**Estimated Total Burden Hours:** 1,800 hours.

**Clearance Officer:** Glenn P. Kirkland, (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Michael A. Robinson,**

*Treasury PRA Clearance Officer.*

[FR Doc. 05-22339 Filed 11-8-05; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 3, 2006. The basic fee for the transfer of a Treasury book-entry security will increase from \$.21 to \$.22. The Federal Reserve funds movement fee will be \$.04, unchanged from the funds movement fee in effect since January 2, 2004, resulting in a combined fee of \$.26 for each Treasury securities transfer.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer in CY 2006 will be \$33.00, unchanged from CY 2005.

**EFFECTIVE DATE:** January 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** James Sharer, Government Securities Specialist, Bureau of the Public Debt, 799 9th Street NW., Washington, DC 20239, telephone (202) 504-3658.

Danny Convery, Financial Systems Analyst, Bureau of the Public Debt, 799 9th Street NW., Washington, DC 20239, telephone (202) 504-3675.

Kristina Yeh, Financial Systems Analyst, Bureau of the Public Debt, 799 9th Street NW., Washington, DC 20239, telephone (202) 504-3679.

**SUPPLEMENTARY INFORMATION.** On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Based on the latest review of book-entry costs and volumes Treasury will increase its basic fee from the levels currently in effect. Effective January 3, 2006, the basic fee will increase from \$.21 to \$.22 for each Treasury securities transfer and reversal sent and received, changed from fees in effect since CY 2005. The surcharge for an off-line Treasury book-entry transfer in CY 2006 will be \$33.00, unchanged from CY 2005.

The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of a security transfer. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstitution of Treasury securities, the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. Information concerning book-entry transfers of government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System elsewhere in this issue (Docket No. DP-1241).

The following is the Treasury fee schedule that will take effect on January 3, 2006, for the book-entry transfers on NBES:

### TREASURY—NBES FEE SCHEDULE <sup>1</sup>; EFFECTIVE JANUARY 3, 2006.

(In Dollars)

Transfer type	Basic fee	Off-line sur-charge	Funds <sup>2</sup> move-ment fee	Total fee
On-line transfer originated .....	.22	N/A	.04	.26
On-line transfer received .....	.22	N/A	.04	.26
On-line reversal transfer originated .....	.22	N/A	.04	.26
On-line reversal transfer received .....	.22	N/A	.04	.26
Off-line transfer originated .....	.22	33.00	.04	33.26
Off-line transfer received .....	.22	33.00	.04	33.26
Off-line account switch received .....	.22	.00	.04	.26
Off-line reversal transfer originated .....	.22	33.00	.04	33.26

TREASURY—NBES FEE SCHEDULE <sup>1</sup>; EFFECTIVE JANUARY 3, 2006.—Continued  
(In Dollars)

Transfer type	Basic fee	Off-line sur-charge	Funds <sup>2</sup> move-ment fee	Total fee
Off-line reversal transfer received .....	.22	33.00	.04	33.26

<sup>1</sup> The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

<sup>2</sup> The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

**Authority:** 31 CFR 357.45.

Dated: October 26, 2005.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. 05-22225 Filed 11-8-05; 8:45 am]

**BILLING CODE 4810-39-P**



# Federal Register

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**Wednesday,  
November 9, 2005**

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## **Part II**

### **Department of Health and Human Services**

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**Centers for Medicare & Medicaid Services**

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**42 CFR Part 484**

**Medicare Program; Home Health  
Prospective Payment System Rate Update  
for Calendar Year 2006; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Part 484****[CMS-1301-F]****RIN 0938-AN44****Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2006****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. This final rule is the first update of the home health prospective payment system (HH PPS) rates that uses the revised area labor market Metropolitan Statistical Area designations for calendar year 2006. In implementing the new area labor market designations, we are allowing for a one-year transition period. This transition consists of a blend of 50 percent of the new area labor market designations' wage index and 50 percent of the previous area labor market designations' wage index. In addition, we are revising the fixed dollar loss ratio, which is used in the calculation of outlier payments.

**EFFECTIVE DATE:** These regulations are effective on January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Randy Thordset, (410) 786-0131. Sharon Ventura, (410) 786-1985.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Statutory Background*

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105-33), enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Until the implementation of a home health prospective payment system (HH PPS) on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system. Section 4603 of the BBA governed the development of the HH PPS.

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services provided under a plan of care that were paid on a reasonable cost basis by adding section 1895, entitled

"Prospective Payment For Home Health Services," to the Social Security Act (the Act).

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable increase percentage as specified in the statute.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for the different area wage levels for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Estimated total outlier payments in a given year cannot exceed 5 percent of total payments projected or estimated.

On December 8, 2003, the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108-173). This legislation affected how we make updates to HH payment rates.

Section 701 of the MMA changed the yearly update cycle of the HH PPS rates from that of a fiscal year to a calendar year update cycle for 2004 and any subsequent year. Generally, section 701(a) of the MMA changed the references in the statute to refer to the calendar year for 2004 and any

subsequent year. The changes resulted in updates to the HH PPS rates described as "fiscal year" updates for 2002 and 2003 and as "calendar year" updates for 2004 and any subsequent year (section 1895(b)(3)(B)(i) of the Act). Beginning on January 1, 2005, the HH PPS will be updated on a calendar year update cycle.

In addition to changing the update cycle for HH PPS rates, section 701 of the MMA made adjustments to the home health applicable increase percentage for 2004, 2005, and 2006. Specifically, section 701(a)(2)(D) of the MMA left unchanged the home health market basket update for the last calendar year quarter of 2003 and the first calendar year quarter of 2004 (section 1895(b)(3)(B)(ii)(II) of the Act).

Furthermore, section 701(b)(4) of the MMA set the home health applicable percentage increase for the last 3 quarters of 2004 as the home health market basket (3.1 percent) minus 0.8 percentage point (section 1895(b)(3)(B)(ii)(III) of the Act). We implemented this provision through Pub. 100-20, One Time Notification, Transmittal 59, issued February 20, 2004. Section 701(b)(4) of the MMA also provided that updates for CY 2005 and CY 2006 will equal the applicable home health market basket percentage increase minus 0.8 percentage point. Lastly, section 701(b)(3) of the MMA revised the statute to provide that HH PPS rates for CY 2007 and any subsequent year will be updated by that year's home health market basket percentage increase (section 1895(b)(3)(B)(ii)(IV) of the Act).

*B. Updates**1. 2000 Final Rule*

On July 3, 2000, we published a final rule (65 FR 41128) in the **Federal Register** to implement the HH PPS legislation. That final rule established requirements for the new PPS for HHAs as required by section 4603 of the BBA, and as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999 (Pub. L. 105-277), enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Pub. L. 106-113), enacted on November 29, 1999. The requirements include the implementation of a PPS for HHAs, consolidated billing requirements, and a number of other related changes. The PPS described in that rule replaced the retrospective reasonable-cost-based

system that was used by Medicare for the payment of home health services under Part A and Part B.

## 2. 2004 Final Rule

On October 22, 2004, we published a final rule (69 FR 62124), which set forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. As part of that final rule, we rebased and revised the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. In addition, we revised the fixed dollar loss (FDL) ratio, which is used in the calculation of outlier payments. That final rule was also the first update of the HH PPS rates on a calendar year update cycle. HH PPS was moved to a calendar year update cycle as a result the MMA.

### C. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment, adjusted for case mix and wage index. For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the 60-day episode payment for certain intervening events that give rise to a partial episode payment adjustment (PEP adjustment) or a significant change in condition adjustment (SCIC). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available. For a complete and full description of the HH PPS as required by the BBA and as amended by OCESAA and BBRA, see the July 3, 2000 HH PPS final rule (65 FR 41128).

### D. Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final

regulation except under exceptional circumstances.

This final rule finalizes provisions set forth in the July 14, 2005 proposed rule (70 FR 40788). In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that the final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

## II. Provisions of the Proposed Regulations

We published a proposed rule in the **Federal Register** on July 14, 2005 (70 FR 40788) that set forth a proposed update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. We also proposed to implement the revised area labor market Metropolitan Statistical Area designations for calendar year 2006.

### A. National Standardized 60-Day Episode Rate

Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under Medicare HH PPS is a national standardized 60-day episode rate. As set forth in 42 CFR 484.220, we adjust the national standardized 60-day episode rate by a case mix grouping and a wage index value based on the site of service for the beneficiary. The proposed CY 2006 HH PPS rates used the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the July 3, 2000 final rule. In the October 22, 2004 final rule, we rebased and revised the home health market basket, resulting in a labor related share of 76.775 percent and a non-labor portion of 23.225 percent (69 FR 62126). We multiply the national 60-day by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary. As the home health market basket was rebased and revised last year, we did not propose to rebase it for CY 2006.

As required by section 1895(b)(3)(B) of the Act, we have updated the HH PPS rates annually in a separate **Federal Register** document. Section 484.225 sets forth the specific percentage update for fiscal years 2001 through 2008. As amended by section 701 of the MMA, § 484.225(f) sets the CY 2006 unadjusted national prospective 60-day episode

payment rate equal to the rate from the previous calendar year (CY 2005), increased by the applicable home health market basket minus 0.8 percentage point.

For CY 2006, we proposed to use again the design and case-mix methodology described in section III.G of the HH PPS July 3, 2000 final rule (65 FR 41192 through 41203). For CY 2006, we will base the wage index adjustment to the labor portion of the PPS rates on the most recent pre-floor and pre-reclassified hospital wage index as discussed in section II.D of this final rule (not including any reclassifications under section 1886(d)(8)(B)) of the Act.

As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit amounts by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary as set forth in § 484.230. We will adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index, as discussed in section II.D of the July 14, 2005 proposed rule.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines the rate level at which Medicare will pay the claim for the fiscal period.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.



- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.

- A significant change in condition adjustment as set forth in § 484.205(e) and § 484.237.

- An outlier payment as set forth in § 484.205(f) and § 484.240.

The July 14, 2005 proposed rule reflected the proposed updated CY 2006 rates, effective January 1, 2006.

#### *B. CY 2006 Update to the Home Health Market Basket Index*

Section 1895(b)(3)(B) of the Act, as amended by section 701 of the MMA, requires for CY 2006 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket update minus 0.8 percentage point.

#### *CY 2006 Adjustments*

In calculating the annual update for the CY 2006 60-day episode rates, we first look at the CY 2005 rates as a starting point. The CY 2005 national 60-day episode rate, as published in the **Federal Register** (69 FR 62124) is \$2,264.28.

In order to calculate the CY 2006 national 60-day episode rate, we multiply the CY 2005 national 60-day episode rate (\$2,264.28) by the estimated home health market basket

update of 3.6 percent for CY 2006 minus 0.8 percentage point.

We increase the CY 2005 60-day episode payment rate by the estimated home health market basket update (3.6 percent) minus 0.8 percentage point (\$2,264.28 × 2.8 percent) to yield the updated CY 2006 national 60-day episode rate (\$2,327.68) (see Table 1).

**TABLE 1.—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2006, MINUS 0.8 PERCENTAGE POINT, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT**

Total prospective payment amount per 60-day episode for CY 2005	Multiply by the estimated home health market basket update (3.6 percent) minus 0.8 percentage point <sup>1</sup>	CY 2006 updated national 60-day episode rate
\$2,264.28	× 1.028	\$2,327.68

<sup>1</sup> The estimated home health market basket update of 3.6 percent for CY 2006 is based on Global Insight, Inc., 3rd Qtr, 2005 forecast with historical data through 2nd Qtr, 2005.

**TABLE 2.—NATIONAL PER-VISIT AMOUNTS FOR LUPAS AND OUTLIER CALCULATIONS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2006, MINUS 0.8 PERCENTAGE POINT, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY**

Home health discipline type	Final per-visit amounts per 60-day episode for CY 2005 for LUPAs	Multiply by the estimated home health market basket (3.6 percent) minus 0.8 percentage point <sup>1</sup>	Per-visit payment amount per discipline for CY 2006 for LUPAs
Home Health Aide .....	\$44.76	× 1.028	\$46.01
Medical Social Services .....	158.45	× 1.028	162.89
Occupational Therapy .....	108.81	× 1.028	111.86
Physical Therapy .....	108.08	× 1.028	111.11
Skilled Nursing .....	98.85	× 1.028	101.62
Speech-Language Pathology .....	117.44	× 1.028	120.73

<sup>1</sup> The estimated home health market basket update of 3.6 percent for CY 2006 is based on Global Insight, Inc., 3rd Qtr, 2005 forecast with historical data through 2nd Qtr, 2005.

#### *C. Outliers & the Fixed Dollar Loss Ratio*

Outlier payments are payments made in addition to regular 60-day case-mix and wage-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments are made for episodes for which the estimated cost exceeds a threshold amount. The episode's estimated cost is the sum of

the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group, PEP adjustment, or total SCIC adjustment is defined as the 60-day episode payment amount, PEP adjustment, or total SCIC adjustment for that group plus an FDL amount. Both components of the outlier threshold are wage-adjusted.

#### *National Per-visit Amounts Used to Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations*

As discussed previously in the July 14, 2005 proposed rule, the policies governing the LUPAs and outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue during CY 2006. In calculating the annual update for the CY 2006 national per-visit amounts we use to pay LUPAs and to compute the imputed costs in outlier calculations, we look again at the CY 2005 rates as a starting point. We then multiply those amounts by the estimated home health market basket update minus 0.8 percentage point for CY 2006 to yield the updated per-visit amounts for each home health discipline for CY 2006 (see Table 2).

The wage-adjusted FDL amount represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. The FDL is computed by multiplying the wage-adjusted 60-day episode payment amount by the FDL ratio, which is a proportion expressed in terms of the national standardized episode payment amount. The outlier payment is defined to be a proportion of

the wage-adjusted estimated costs beyond the wage-adjusted threshold. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

Section 1895(b)(5) of the Act requires that estimated total outlier payments are no more than 5 percent of total estimated HH PPS payments. In response to the concerns about potential financial losses that might result from unusually expensive cases expressed in comments to the October 28, 1999 proposed rule (64 FR 58133), the July 3, 2000 final rule set the target for estimated outlier payments at the 5 percent level. The FDL ratio and the loss-sharing ratio were then selected so that estimated total outlier payments would meet the 5 percent target.

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of episodes that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments for outlier episodes. Alternatively, a lower FDL ratio means that more episodes can qualify for outlier payments, but outlier payments per episode must be lower. As a result of public comments on the October 28, 1999 proposed rule, in our July 3, 2000 final rule, we made the decision to set the FDL at a level estimated to cover a relatively high proportion of the costs of outlier cases for the most expensive episodes that would qualify for outlier payments within the 5 percent constraint.

In the July 3, 2000 final rule, we chose a value of 0.80 for the loss-sharing ratio, which preserves incentives for agencies to attempt to provide care efficiently for outlier cases. A loss-sharing ratio of 0.80 was also consistent with the loss-sharing ratios used in other Medicare PPS outlier policies. We still believe that a loss-sharing ratio of 0.80 is appropriate. Furthermore, we estimated the value of the FDL ratio that would yield estimated total outlier payments that were 5 percent of total home health PPS payments. The resulting value for the FDL ratio, for the July 3, 2000 final rule, was 1.13.

In the CY 2005 update to the HH PPS rates (69 FR 62124), we revised the FDL ratio from the original 1.13 to 0.70 to allow more home health episodes to qualify for outlier payments and to better meet the estimated 5 percent target of outlier payments to total HH PPS payments. We stated in that CY 2005 update that we planned to continue to monitor the outlier expenditures on a yearly basis and to make adjustments as necessary (69 FR

62129). To do so, we planned on using the best Medicare data available at the time of publication. For the CY 2005 update, we used CY 2003 home health claims data. At the time of publication of the CY 2006 proposed rule, we did not have more recent data, but noted that we may update the FDL ratio for CY 2006 depending on the availability of more recent data. We further noted that if we updated the FDL ratio for the CY 2006 update, we would use the same methodology performed in updating the current FDL ratio described in the October 22, 2004 final rule. Subsequent to publication of the CY 2006 proposed rule, we have now obtained more recent data, that is, CY 2004 home health claims data.

Accordingly for this final rule, we have used the same methodology and performed an analysis on the CY 2004 HH PPS analytic data to update the FDL ratio for CY 2006. The results of this analysis indicate that an FDL ratio of 0.65 is consistent with the existing loss-sharing ratio of 0.80 and a projected target percentage of estimated outlier payments of 5 percent. Therefore, we are updating the FDL ratio from the current 0.70 to 0.65 for CY 2006. As explained below, we believe reducing the FDL ratio will allow more episodes to qualify for outlier payments.

Expressed in terms of a fixed dollar loss amount, an FDL ratio of 0.65 indicates that providers would absorb approximately \$1,513 of their costs (before wage adjustment), in addition to their loss-sharing portion of the estimated cost in excess of the outlier threshold. This fixed dollar loss amount of approximately \$1,513 is computed by multiplying the standard 60-day episode payment amount (\$2,327.68) by the FDL ratio (0.65). In contrast, using the current FDL ratio (0.70), the fixed dollar loss amount would be approximately \$1,629 ( $\$2,327.68 \times 0.70$ ).

Thus, we believe that an FDL ratio of 0.65 continues to preserve a reasonable degree of cost sharing, and continues to meet the statutory requirements while still allowing a greater number of episodes to qualify for outlier payments.

#### *D. Hospital Wage Index*

##### *1. Revised OMB Definition for Geographical Statistical Areas*

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under HH PPS to account for area wage

differences. We apply the appropriate wage index value to the labor portion (76.775 percent; see 60 FR 62126) of the HH PPS rates based on the geographic area in which the beneficiary received home health services as discussed in section II.A of the July 14, 2005 proposed rule. Generally, we determine each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB).

We acknowledged in our October 22, 2004 final rule that, on June 6, 2003, the OMB issued an OMB Bulletin (No. 03-04) announcing revised definitions for MSAs, new definitions for Micropolitan Statistical Areas and Combined Statistical Areas, and guidance on using the statistical definitions. A copy of the Bulletin may be obtained at the following Internet address: <http://www.whitehouse.gov/omb/bulletins/b03-04.html>. At that time, we did not propose to apply these new definitions known as Core-Based Statistical Areas (CBSAs). In the July 14, 2005 proposed rule, we proposed to use the OMB-revised definitions to adjust the CY 2006 HH PPS payment rates and revise the regulations at 42 CFR 484.202 to reflect this proposed change. The Hospital Inpatient PPS (IPPS) applied these revised definitions as discussed in the August 11, 2004 IPPS final rule (68 FR 49207).

##### *a. Background*

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. Again, as discussed in the July 3, 2000 final rule, we will use the pre-floor and pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates based on the geographic area in which the beneficiary receives the home health services. We believe the use of the pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute. For the CY 2006 update to the home health payment rates, we will continue to use the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication. See Addenda A and B of this final rule, respectively, for the rural and urban hospital wage indices using the new MSA designations. For HH PPS rates addressed in the July 14, 2005 proposed rule, we used preliminary 2006 pre-floor and pre-reclassified hospital wage index data. We incorporated updated hospital

wage index data for the 2006 pre-floor and pre-reclassified hospital wage index to be used in the final rule for the CY 2006 HH PPS update (not including any reclassifications under section 1886(d)(8)(B) of the Act).

As implemented under the HH PPS in the July 3, 2000 HH PPS final rule, each HHA's labor market is determined based on definitions of MSAs issued by OMB. In general, an urban area is defined as an MSA or New England County Metropolitan Area (NECMA) as defined by OMB. Under § 412.62(f)(1)(iii), a rural area is defined as any area outside of the urban area. The urban and rural area geographic classifications are defined in § 412.62(f)(1)(ii) and (f)(1)(iii), respectively, and have been used under HH PPS since it was implemented.

Under the HH PPS, the wage index value used is based upon the location of the beneficiary's home. As has been our longstanding practice, any area not included in an MSA (urban area) is considered to be nonurban (§ 412.64(b)(1)(ii)(C)) and receives the statewide rural wage index value (see, for example, 65 FR 41173).

In the August 11, 2004 IPPS final rule (69 FR 49206 through 49034), revised labor market area definitions were adopted under § 412.64(b), which were effective October 1, 2004 for acute care hospitals. The new standards, CBSAs, were announced by OMB in late 2000 and were also discussed in greater detail in the July 14, 2005 HH PPS proposed rule. Recently other prospective payment systems such as the inpatient rehabilitation facility PPS (IRF PPS) and the skilled nursing facility PPS (SNF PPS) and Medicare payment for hospice care have been updated to utilize the new revised labor market area definitions. For the purposes of this rule, the term "MSA-based" refers to wage index values and designations based on the previous MSA designations. Conversely, the term "CBSA-based" refers to wage index values and designations based on the new OMB revised MSA designations which now include CBSAs.

### III. Analysis of and Responses to Public Comments

We received approximately 35 comments on the HH PPS proposed rule published on July 14, 2005. A summary of the major issues and our responses follow:

#### Market Basket

*Comment:* A commenter indicated that CMS institute a modification to the market basket index formula to allow for consideration of cost increases,

specifically transportation costs related to rising gasoline prices. The commenter noted that the rising spike in gas prices highlights the unique costs and challenges in delivering home health services that are not faced by hospitals or other health care providers. The commenter further noted that HHAs are one of the few Medicare providers so reliant upon fuel to provide healthcare services and this is especially relevant in rural areas where distance between patients can exceed 50 miles.

*Response:* As an input price index, the 2000-based HH market basket and CY 2006 HH update is intended to reflect the price increases associated with transportation, not cost increases. The transportation base year cost weight, derived from the 2000 HHA Medicare cost reports, represents 2.744 percent of the HH market basket. In determining the HH market basket percentage increase, these costs are proxied using the Consumer Price Index (CPI) for private transportation; therefore, we believe forecasts of this price proxy reflect the price changes of fuel.

*Comment:* A commenter noted that CMS has chosen not to rebase and revise the home health market basket for 2006. The commenter stated that CMS should develop a timely process to rebase and revise the home health market basket. The commenter also stated that CMS should consider rebasing more frequently than previous years as more current data become available.

*Response:* We note that we recently rebased the 2000-based HH market basket for the CY 2004 HH PPS update. As we noted in the October 22, 2004 final rule, we typically rebase the market baskets on a 5-year cycle. We will continue to monitor the home health market basket to ensure that it continues to accurately reflect the cost structures of HHAs.

*Comment:* A commenter recommended that CMS should establish a technical advisory group that includes economists who can review the costs going into the home health market basket. Technology costs, transportation costs, workers compensation insurance, and the cost of providing home health preparedness in emergency situations significantly impact the ability to provide adequate home health services. Another commenter urged CMS to review and consider more appropriate ways to reflect the true economic realities as they relate to home health services. More accurate reflection of the economic environment will also alleviate the large variations in changes to the wage index from year to year for home health providers.

*Response:* The majority of the 2000 base year cost weights (accounting for more than 90 percent of the home health market basket cost structure) were derived using the 2000 Medicare cost reports for freestanding HHAs. The price increases associated with the individual cost weights are forecasted by Global Insight, Inc. (GII). GII is a nationally recognized economic and financial forecasting firm that forecasts the components of the market baskets. While we believe the HH forecast is a reliable measure of the costs of providing HH services, specific comments and suggestions by other technical experts on the market basket, cost structure, and price increases are appreciated.

*Comment:* Although required by law, a commenter opposed implementation of the 0.8 percent reduction to the market basket.

*Response:* We acknowledge the comment but believe we must fulfill the statutory mandate that requires that our update to the HH payment rate be the applicable HH market basket percentage increase minus 0.8 percentage points.

#### Outlier Payment

*Comment:* A commenter noted that, in the proposed rule, CMS proposes no change to the outlier payment formula and notes that if CMS is considering modifying the outlier formula for the final rule, CMS should issue a proposed rule on any such change to allow for full public review and comment. The commenter stated that making policy changes on the HH PPS final rule is improper, and doing so would not follow appropriate procedure for CMS inspection and assessment in developing policies. Moreover, the commenter believes that the outlier threshold should be reduced each year until expenditures equal the 5 percent threshold specified in legislation and that when CMS determines that expenditures have reached the threshold, the evidence for making no further reductions in the threshold should be presented in the proposed rule and finalized after public comment.

*Response:* We do not disagree with the commenter but, as we stated in the July 14, 2005 proposed rule, we did not propose any change to the outlier methodology. We are updating the FDL ratio using the same methodology described in the October 22, 2004 final rule using the most recent available data. Using the most available data, our analysis showed that the FDL ratio applied to the computation of outlier payments should be decreased. As such, the lower FDL ratio will benefit HHAs by allowing more episodes to qualify for

outlier payments. The updated FDL ratio is 0.65, which we believe results in the estimated total outlier payments meeting the 5 percent target.

We will continue to analyze current and future data in order to ensure that the FDL ratio is effective at maintaining estimated total outlier payments at the 5 percent level.

#### *Rural Add-On*

*Comment:* Several commenters urged CMS to either restore or advocate for the re-establishment of the rural add-on for home health services furnished to beneficiaries living in rural areas.

*Response:* The rural add-on was a temporary add-on established by the MMA. Specifically, section 421 of the MMA required, for home health services furnished in a rural area with respect to episodes and visits ending on or after April 1, 2004 and before April 1, 2005, that we increase by 5 percent the payment amount that otherwise would be made for the services. The statute does not provide for a continuation of the add-on.

#### *Wage Index Tables*

*Comment:* A commenter would like to see wage index tables that compare the proposed wage index with the current wage index and show the year to year change in each locality. The commenter suggested that tables be presented both in CBSA alphabetical order, as well as by county within the State, as was done in the July 14, 2005 proposed rule. Also, the commenter suggested that a table highlight those areas experiencing the largest increases and decreases in the wage index. If more complete tables cannot be published in the **Federal Register** itself, the commenter suggested contemporaneous publication on the CMS Web site.

*Response:* The final rule presents the wage index values in several different table formats. The wage index values are presented in CBSA order in Addendum B and Addendum C. The wage index values are presented by State and county in Addendum A.

#### *Home Health Wage Index*

*Comment:* A commenter questioned how CMS' pre-floor, pre-reclassified hospital wage index published in the July 14, 2005 **Federal Register** for the HH PPS proposed rule could be substantially different from the pre-floor, pre-reclassified hospital wage index published in the August 4, 2005 **Federal Register** for the SNF PPS final rule (70 FR 45026).

*Response:* The difference between "Table 8.—FY2006 Wage Index for Urban Areas Based on CBSA Labor

Market Areas" contained in the August 4, 2005 SNF PPS final rule and "Addendum B.—Proposed CY 2006 Wage Index for Urban Areas by CBSA; Applicable Pre-Floor and Pre-Reclassified Hospital Wage Index" in the July 14, 2005 home health proposed rule is attributable to the fact that the SNF update and the HH proposed update are published at different times. In the July 14, 2005 HH PPS proposed rule, the 2006 pre-floor, pre-reclassified hospital wage index was a preliminary version of the wage index. Between the time of publication of the July 14, 2005 home health PPS proposed rule and the time of publication of the SNF PPS final rule, a final version of the 2006 pre-floor, pre-reclassified hospital wage index became available and was subsequently published in the SNF PPS final rule.

*Comment:* A number of commenters stated that the wage index formula is seriously flawed, claiming it does not reflect the cost of providing home health services. The commenters noted that providing home health services is unique from providing hospital services in that HHAs incur transportation costs (high gasoline costs) and auto insurance. Moreover, they stated that in the era of this nursing shortage, it is difficult to compete with hospitals to recruit and retain nursing staff. The commenters suggested that CMS should review its factors used in the wage index and communicate to providers how it applies the formulas to take into account the unique costs to HH that impact Medicare beneficiaries.

*Response:* We disagree with the commenters' statement that the wage index formula is flawed. We believe the home health payment policy that utilizes hospital data as the input for calculating geographic area wage adjustments is the best available proxy for determining the related cost of home health wage and wage level costs. In addition, the home health payment rates incorporate a home health market basket update factor which reflects the unique costs of providing home health services as opposed to hospital or any other type of healthcare services.

*Comment:* A commenter stated that future changes to the wage index should be accompanied by a comprehensive impact analysis and at least one year's notice in advance of the proposed change. Adaptations to large swings in reimbursement cannot be accommodated on short notice and threaten stability in providing services.

*Response:* We believe that using the best available data, at the time of publication, for purposes of updating the HH payment rates is a valid

reflection of the wage and wage level costs used in providing HH services.

*Comment:* A commenter stated that the wage index listed in the proposed rule is based on preliminary 2006 pre-floor, pre-reclassified hospital wage data. In the proposed rule, CMS stated it will use the most recent pre-floor, pre-reclassified hospital wage index data available at the time of publication. The commenter suggested that CMS should update the wage index based on the final 2006 pre-floor and pre-reclassified hospital wage data, not preliminary data. The preliminary data contained errors that were corrected when final hospital wage indexes were issued.

*Response:* We are updating the HH payment rates using the most recent 2006 pre-floor, pre-reclassified hospital wage index data. As we noted in the July 14, 2005 proposed rule, because of the timing of the proposed rule, the most recent available data at that time were the preliminary 2006 pre-floor, pre-reclassified hospital wage index, and that more recent data would be used in the final rule.

*Comment:* Several commenters supported the move to CBSAs. One commenter believes that CBSAs provide significantly better measures of individual labor markets and fully supports their adoption.

*Response:* We appreciate the commenter's support. As we note later, we are adopting wage index values using CBSA designations.

*Comment:* A commenter suggested that CMS should validate the accuracy and completeness of wage data submitted by hospitals to ensure that all hospitals in an area have reported.

*Response:* We believe CMS employs current processes that accomplish this validation. All IPPS hospitals must complete the wage index survey (Worksheet S-3, Parts II and III) as part of their Medicare cost reports. Cost reports will be rejected if Worksheet S-3 is not completed. Additionally, intermediaries perform desk reviews on all hospitals' Worksheet S-3 wage data, and CMS runs edits on the wage data to further ensure the accuracy and validity of the wage data.

*Comment:* A commenter suggested that CMS should provide a mechanism for HHAs to challenge the accuracy of wage index values for their areas, especially in cases where there are indications of an irregularity.

*Response:* As we currently use hospital wage index data as the basis for the HH geographic wage adjustment, HHAs have the opportunity to submit comments on the hospital wage index data during the annual IPPS rulemaking period.

### Transition

*Comment:* We received a number of comments against using the new CBSA designations. We received a number of comments stating that at a minimum, CMS should institute a transition policy similar to that being implemented by SNFs, hospices, and inpatient rehabilitation facilities. Most commenters suggested a one-year transition period. Some of the commenters recommended a two-year or three-year transition period.

Most commenters recommended a 50/50 blend of the previous and new labor market definitions. One commenter suggested a multi-year phase-in using a blend of previous and new with increasing reliance on the new wage index in each successive year (for example, 25 percent, 50 percent, 75 percent, then 100 percent of the CBSA). Several commenters stated that the transition policy should be applied to wage areas that would experience a decrease in their wage index. Some commenters stated that wage index values for wage areas that would be subject to a decrease remain static. Other commenters suggested the use of a wage index floor to avoid large fluctuations in the wage index. Most commenters wanted a transition period for all wage areas.

*Response:* We have considered all the comments, and we are adopting a wage index transition policy for HH PPS for CY 2006. The wage index transition policy for CY 2006 is a 50/50 blend of the CBSA-based wage index values and the MSA-based wage index values and will be applied to all wage areas. For CY 2007, the HH PPS will be solely based on a CBSA-based wage index. We believe that the one-year transition policy using a 50/50 blend is responsive to the majority of comments that recommended a one-year transition and the majority that recommended a 50/50 blend while still maintaining an appropriate adjustment to account for geographic wage differences. Addendum A displays the wage index in State and County order showing the MSA-based wage index values, the CBSA-based wage index values, and the blended wage index values. Addendum B and Addendum C display the wage index in CBSA order.

*Comment:* A commenter suggested that CMS needs to revisit the assumption underlying the wage indices in micropolitan areas. The commenter stated that in any situation where a county of a micropolitan area is contiguous with the principal county of a metropolitan area, CMS must independently determine whether a

unified labor market exists and allow for use of an urban rate calculation.

*Response:* We refer readers to the explanation in the FY 2005 IPPS final rule published August 11, 2004 for our adoption of the new Census designations as well as the treatment of micropolitan areas as rural (69 FR 49026).

*Comment:* A commenter recommended that the hospital wage index should not exclude CAHs when used for the specific purpose of determining rates for other providers that operate in the same areas served by the CAHs.

*Response:* This comment is outside the scope of the HH PPS update final rule. Any comments regarding the specifics of the hospital wage index policy should be presented during the IPPS rulemaking period.

*Comment:* A commenter requested that CMS review and reconsider the wage index calculation for Massachusetts' rural areas.

*Response:* As the only hospitals left in rural Massachusetts are two critical access hospitals (CAHs), and data from CAHs are no longer included in the IPPS, there are no *updated* data from which to calculate a wage index for rural Massachusetts for use in the HH PPS update for CY 2006. In providing for an appropriate standard to account for area wage differences, for the purposes of the HH PPS update, we believe a reasonable proxy for the wage index for rural Massachusetts for CY 2006 is the 2005 pre-floor, pre-reclassified hospital wage index data.

*Comment:* Several commenters expressed concern about decreasing wage index values for specific counties.

*Response:* We appreciate the detailed concerns sent by the commenters regarding the impact of the wage index update for their specific counties. We note that there will always be some areas that experience an increase in wage index values while others experience a decrease in wage index values. Variability in wage index values occurs each year as wage index values fluctuate from year to year based on the changes to the hospital wage data. As a result, wage index values within the system increase or decrease. We are aware of the changes to wage index values due in part to the adoption of the revised OMB designations and note we have provided a transition period for CY 2006.

### Wage Index Reform

*Comment:* A commenter recommended that in order to provide parity between hospitals and HHAs in areas where hospitals have reclassified

to a higher wage index area, CMS should either authorize a similar wage index adjustment for HHAs or seek such authority from the Congress, as well as authority to put a floor on wage index reductions from one year to the next.

The commenter also suggested that CMS should begin a wholesale revision and reform of the home health wage index. This reform should consider the impact on care access and financial stability of HHAs measured at the local level.

*Response:* The statute does not provide authority to allow HHAs to apply for geographic reclassification. We also note that the HH PPS wage index adjustment is based on the geographic area where the beneficiary received home health services, not where the HHA is located. As to the revision and reform of the home health wage index, we further note that CMS has, along with the industry, explored the feasibility of developing a home health specific wage index. Because of the volatility of the home health wage data and the significant amount of resources that would be required to improve the quality of that data, we do not expect to propose a home health specific wage index until we can demonstrate that a home health specific wage index would be more reflective of the wages and salaries paid in a specific area, that it would significantly improve our ability to determine payment for home health agencies, and that we can justify the resources required to collect the data, as well as the increased burden on providers.

*Comment:* A commenter recommended that there needs to be an ongoing dialogue between State and national home care associations and CMS in order to determine a more appropriate payment methodology for home care. A commenter stated that CMS should establish a home health technical advisory group to regularly review and update the multitude of parts of the HH PPS reimbursement methodology.

*Response:* We appreciate the comment; however, we do not believe such a group is necessary as such a dialogue envisioned by the commenter currently exists. We have always received input from the industry on various aspects of our Medicare payment systems, and we anticipate this practice will continue into the future. Moreover, the "open-door" forums, that we initiated, provide the public with an opportunity to provide input and comment on home health in general, including the payment policies used in the HH PPS.

**LUPA**

*Comment:* We received a comment that LUPA reimbursement is inadequate for New York. The commenter stated that there should be a review and increase to the LUPA per visit rates to ensure that they cover the costs of providing care.

*Response:* We believe the LUPA per-visit rates adequately account for the costs of providing care in such a situation. The per-visit rates used for the LUPA are adjusted by the appropriate wage index and updated annually by the home health market basket update minus 0.8 percent as required by the statute.

**Case Mix Weight**

*Comment:* Commenters stated that the HHRG case mix classification does not recognize the added costs of the dually eligible beneficiaries, noting that this population has more comorbidities and often lacks the informal supports non-dually eligible beneficiaries have. As these complexities add to the cost of providing care, the commenters suggested that an add-on for these patients should be implemented until refinements to the case mix system can be made.

*Response:* We are currently analyzing possible refinements to the case mix system. Concerns such as those expressed by the commenters are included in our review and analysis. We note that our analysis includes not only review of statistical data but also review of operational feasibility and policy implications.

*Comment:* We received a comment stating that the case-mix system does not adequately recognize the costs of wound care given the intensity of some of these patients and the newest supplies that can facilitate rapid healing.

*Response:* We appreciate the comment and note that wound care's impact on case-mix is being addressed in our refinement review and analysis through a study of supplies' costs as a component of case mix and through other types of case-mix model refinements.

*Comment:* A commenter recommended that CMS should institute ongoing analysis of the case-mix weights along with a mechanism to refine the case-mix adjustments. CMS has 3 years of data that should assist in this process.

*Response:* We agree and our refinement review and analysis, which is currently under development, addresses a revision of the case-mix weights resulting from a refinement of

the underlying case mix model and of the resulting set of groups.

**IV. Provisions of the Final Regulations**

Generally, this final rule incorporates the provisions of the July 14, 2005 proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

There will be a one-year transition period in implementing the new area labor market designations for purposes of adjusting for area wage differences. In calculating the wage index applicable to HH PPS for CY 2006, the wage index will be a blend of 50 percent of wage index values based on CBSA designations and 50 percent of the wage index values based on MSA designations.

In addition, we are revising the fixed-dollar loss ratio used in the calculation of outlier payments.

**V. Collection of Information Requirements**

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

**VI. Regulatory Impact Analysis****A. Overall Impact**

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). The update set forth in July 14, 2005 proposed rule applies to Medicare payments under HH PPS in CY 2006. Accordingly, the following analysis describes the impact in CY 2006 only. We estimate that there will be an additional \$370 million in CY 2006

expenditures attributable to the CY 2006 proposed estimated home health market basket update (3.6 percent) minus 0.8 percentage points, for a CY 2006 update of 2.8 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of \$11.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. This final rule will have a significant positive effect upon small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds or a hospital located in a CBSA. We have determined that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. We believe this final rule will not mandate expenditures in that amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that this final rule will not have substantial direct effects on the rights, roles, and responsibilities of States.

### B. Anticipated Effects

This rule updates the HH PPS rates contained in the CY 2005 final rule (69 FR 62124, October 22, 2004). The impact analysis of this rule presents the projected effects of the change from MSA designations to a 50/50 blend of MSA and CBSA designations in determining the wage index used to calculate the HH PPS rates for CY 2006. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on the latest available Medicare claims from 2004. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Our discussions for this final rule will focus on the impact of changes in the wage index, most notably the adoption of the CBSA designations. The impacts are shown in Table 3 below. The breakdown of the various impacts displayed in the table follows.

The rows display the estimated effect of the proposed changes on different categories. The first row of figures represents the estimated effects on all facilities. The next 2 rows show the effect on urban and rural facilities. This is followed, in the next 4 rows, by impacts on urban and rural facilities based on whether they are a hospital-based or freestanding facility. The next 20 rows show the effect on urban and rural facilities based on the census region in which they are located.

The first column shows the breakdown of all HHAs by urban or rural status, hospital-based or freestanding status, and census region.

The second column in the table shows the number of facilities in the impact database. A facility is considered urban if it is located in an MSA and, conversely, rural if it is not located in an MSA.

The third column of the table shows the effect of the updating the MSA-based wage index (without moving to CBSAs). This column represents the difference between the 2005 MSA-based wage index and the 2006 MSA-based wage index.

The fourth column of the table reflects the impact of using the new OMB geographic designations based on CBSAs, compared to using the MSA designations without a transition policy. As we are implementing a transition policy, this column is shown for reference purposes only.

The fifth column of the table shows the effect of all of the changes on the CY 2006 payments without implementing a transition policy. The update of 2.8 percentage points (market basket increase of 3.6 percent minus 0.8 percentage points, as mandated by the MMA) is constant for all providers and, though not shown individually, is included in this column. In essence, this column represents the sum of columns three and four, adding in the 2.8 percent increase with slight differences due to rounding. Again, as we are implementing a transition policy, this column is shown for reference purposes only.

The sixth column of the table reflects the impact of using the new OMB geographic designations based on CBSAs, compared to using the MSA designations with a transition policy consisting of a 50/50 blend of the previous (MSA-based) and the new (CBSA-based) wage area designations. Specifically, the effect of using the blended wage index values in determining payment for facilities in urban areas is, on average, a decrease of 0.1 percent. On the other hand, facilities in a rural area show an average increase of 0.4 percent. Rural HHAs, by region, generally show an increase using the CBSA-determined wage index (ranging from an increase of 0.1 percent to 1.1 percent), except for facilities in the Middle Atlantic and the Mountain regions where payments are estimated to decrease by 0.3 percent and 0.2 percent respectively. The impact on urban HHAs, by region, is generally

moderate using the 50/50 transition blend of MSA-based and CBSA-based wage index values (ranging from a 0.1 percent increase to a 0.3 percent decrease). By type of facility, the impact on rural facilities using the blended wage index is positive, with payments to freestanding facilities and hospital-based facilities estimated to increase by 0.4 percent. Conversely, hospital-based urban facilities are estimated to experience no impact while freestanding urban facilities are estimated to see a decrease in payments by 0.1 percent.

The seventh column of the table shows the total wage index change with the transition policy. This column represents the sum of the change due to the updated wage data (column 3) and the change due to the move to CBSAs using the transition policy (column 6) with slight differences due to rounding.

The eighth column of the table shows the effect of all of the changes on the CY 2006 payments with a transition policy. The update of 2.8 percentage points (market basket increase of 3.6 percent minus 0.8 percentage points, as mandated by the MMA) is constant for all providers and, though not shown individually, is included in this column. It is projected that total aggregate payments would increase by 2.7 percent; assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes would vary by specific types of providers and by location. For example, HHAs in rural New England show the largest estimated increase in payment at 5.9 percent, while HHAs in the urban West North Central and East North Central regions show the smallest increases in payments at 1.5 percent and 1.7 percent respectively. Rural HHAs in the West North Central regions and East North Central regions differ from urban HHAs in those regions, seeing an estimated increase in payments of 2.7 percent and 3.5 percent, respectively. Amongst the different type of facility categories, freestanding rural HHAs have the largest estimate of increase, with an estimated increase in payments of 3.4 percent. Hospital-based rural HHAs are next with an estimated increase in payments of 3.3 percent with hospital-based urban and freestanding urban HHAs with estimated increases of 2.5 percent and 2.6 percent, respectively.

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**Table 3 -Estimated Impact of CY 2006 Update to the HH PPS**  
**Final column includes update of 2.8 percent**  
**Urban/Rural defined as MSA/non-MSA**

	Number of facilities	Updated wage data	MSA to CBSA without transition	Total CY 2006 change without transition	MSA to CBSA with transition	Total Wage Index Change with transition	Total CY 2006 Change with transition
Total	7,370	-0.1%	0.0%	2.7%	0.0%	-0.1%	2.7%
Urban	5,080	-0.2%	-0.2%	2.4%	-0.1%	-0.3%	2.5%
Rural	2,290	0.1%	0.8%	3.8%	0.4%	0.6%	3.4%
Hospital based urban	1,869	-0.3%	0.0%	2.5%	0.0%	-0.3%	2.5%
Freestanding urban	3,211	-0.1%	-0.2%	2.4%	-0.1%	-0.2%	2.6%
Hospital based rural	1,320	0.2%	0.7%	3.7%	0.4%	0.5%	3.3%
Freestanding rural	970	0.1%	0.9%	3.8%	0.4%	0.6%	3.4%
Urban by region							
New England	251	-0.5%	-0.4%	2.0%	-0.2%	-0.6%	2.2%
Middle Atlantic	423	0.2%	0.2%	3.2%	0.1%	0.3%	3.1%
South Atlantic	863	-0.6%	-0.1%	2.2%	0.0%	-0.6%	2.2%
East North Central	870	-0.8%	-0.5%	1.5%	-0.2%	-1.1%	1.7%
East South Central	205	0.1%	-0.2%	2.7%	-0.1%	0.0%	2.8%
West North Central	269	-1.3%	-0.1%	1.4%	0.0%	-1.3%	1.5%
West South Central	1,270	-0.1%	-0.4%	2.3%	-0.2%	-0.3%	2.5%
Mountain	258	-0.6%	0.0%	2.2%	0.0%	-0.6%	2.2%
Pacific	634	1.1%	0.0%	3.9%	0.0%	1.1%	3.9%
Outlying	37	-0.8%	-0.6%	1.5%	-0.3%	-1.1%	1.7%
Rural by region							
New England	46	3.0%	0.0%	5.9%	0.0%	3.1%	5.9%
Middle Atlantic	82	-0.2%	-0.6%	2.0%	-0.3%	-0.5%	2.3%
South Atlantic	289	-0.7%	0.5%	2.6%	0.3%	-0.4%	2.4%
East North Central	300	0.6%	0.3%	3.7%	0.2%	0.7%	3.5%
East South Central	232	0.0%	0.7%	3.6%	0.4%	0.4%	3.2%
West North Central	523	-0.3%	0.3%	2.8%	0.2%	-0.1%	2.7%
West South Central	505	0.0%	2.3%	5.1%	1.1%	1.2%	4.0%
Mountain	196	0.6%	-0.5%	2.9%	-0.2%	0.3%	3.1%
Pacific	103	2.4%	0.2%	5.3%	0.1%	2.4%	5.2%
Outlying	14	-8.5%	9.3%	3.6%	4.6%	-3.8%	-1.0%

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## C. Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/>

a004/a-4.pdf), in Table 4 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the

increase in Medicare payments under the HH PPS as a result of the changes presented in this final rule based on the data for 7,370 HHAs in our database. All expenditures are classified as transfers to Medicare providers (that is, HHAs).



TABLE 4.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM CY 2005 TO CY 2006  
[in Millions]

Category	TRANSFERS
Annualized Monetized Transfers .....	\$370
From Whom To Whom? .....	Federal Government To HHAs

D. Conclusion

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 484—HOME HEALTH SERVICES

■ 1. The authority citation for part 484 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart E—Prospective Payment System for Home Health Agencies

■ 2. In § 484.202, the definitions for “Rural area” and “Urban area” are added in alphabetical order to read as follows:

§ 484.202 Definitions.

\* \* \* \* \*

*Rural area* means, with respect to home health episodes ending on or after January 1, 2006, an area defined in § 412.64(b)(1)(ii)(C) of this chapter.

*Urban area* means, with respect to home health episodes ending on or after

January 1, 2006, an area defined in § 412.64(b)(1)(ii)(A) and (B) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 13, 2005.

**Mark B. McClellan,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: October 26, 2005.

**Michael O. Leavitt,**  
*Secretary.*

**Note:** The following tables and addenda will not appear in the Code of Federal Regulations.

TABLE 1.—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2006, MINUS 0.8 PERCENTAGE POINT, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Total prospective payment amount per 60-day episode for CY 2005	Multiply by the estimated Home Health Market Basket Update (3.6 Percent) minus 0.8 percentage point	CY 2006 updated National 60-day episode rate
\$2,264.28 .....	× 1.028	\$2,327.68

TABLE 2.—NATIONAL PER-VISIT AMOUNTS FOR LUPAS AND OUTLIER CALCULATIONS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2006, MINUS 0.8 PERCENTAGE POINT, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home Health discipline type	Final per-visit amounts per 60-day episode for CY 2005 for LUPAs	Multiply by the estimated Home Health Market Basket (3.6 percent) minus 0.8 percentage point	Per-visit payment amount per discipline for CY 2006 for LUPAs
Home Health Aide .....	\$44.76	× 1.028	\$46.01
Medical Social Services .....	158.45	× 1.028	162.89
Occupational Therapy .....	108.81	× 1.028	111.86
Physical Therapy .....	108.08	× 1.028	111.11
Skilled Nursing .....	98.85	× 1.028	101.62
Speech-Language Pathology .....	117.44	× 1.028	120.73

TABLE 3.—ESTIMATED IMPACT OF CY 2006 UPDATE TO THE HH PPS

[Final column includes update of 2.8 percent urban/rural defined as MSA/non-MSA]

	Number of facilities (percent)	Updated wage data (percent)	MSA to CBSA without transition (percent)	Total CY 2006 change without transition (percent)	MSA to CBSA with transition (percent)	Total wage index change with transition (percent)	Total CY 2006 Change with transition (percent)
Total .....	7,370	-0.1	0.0	2.7	0.0	-0.1	2.7
Urban .....	5,080	-0.2	-0.2	2.4	-0.1	-0.3	2.5
Rural .....	2,290	0.1	0.8	3.8	0.4	0.6	3.4
Hospital based urban .....	1,869	-0.3	0.0	2.5	0.0	-0.3	2.5
Freestanding urban .....	3,211	-0.1	-0.2	2.4	-0.1	-0.2	2.6
Hospital based rural .....	1,320	0.2	0.7	3.7	0.4	0.5	3.3
Freestanding rural .....	970	0.1	0.9	3.8	0.4	0.6	3.4
Urban by region:							
New England .....	251	-0.5	-0.4	2.0	-0.2	-0.6	2.2
Middle Atlantic .....	423	0.2	0.2	3.2	0.1	0.3	3.1
South Atlantic .....	863	-0.6	-0.1	2.2	0.0	-0.6	2.2
East North Central .....	870	-0.8	-0.5	1.5	-0.2	-1.1	1.7
East South Central .....	205	0.1	-0.2	2.7	-0.1	0.0	2.8
West North Central .....	269	-1.3	-0.1	1.4	0.0	-1.3	1.5
West South Central .....	1,270	-0.1	-0.4	2.3	-0.2	-0.3	2.5
Mountain .....	258	-0.6	0.0	2.2	0.0	-0.6	2.2
Pacific .....	634	1.1	0.0	3.9	0.0	1.1	3.9
Outlying .....	37	-0.8	-0.6	1.5	-0.3	-1.1	1.7
Rural by region:							
New England .....	46	3.0	0.0	5.9	0.0	3.1	5.9
Middle Atlantic .....	82	-0.2	-0.6	2.0	-0.3	-0.5	2.3
South Atlantic .....	289	-0.7	0.5	2.6	0.3	-0.4	2.4
East North Central .....	300	0.6	0.3	3.7	0.2	0.7	3.5
East South Central .....	232	0.0	0.7	3.6	0.4	0.4	3.2
West North Central .....	523	-0.3	0.3	2.8	0.2	-0.1	2.7
West South Central .....	505	0.0	2.3	5.1	1.1	1.2	4.0
Mountain .....	196	0.6	-0.5	2.9	-0.2	0.3	3.1
Pacific .....	103	2.4	0.2	5.3	0.1	2.4	5.2
Outlying .....	14	-8.5	9.3	3.6	4.6	-3.8	-1.0

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
01000 .....	Autauga County, Alabama .....	5240	0.8618	0.8618	33860	50284	0.8618
01010 .....	Baldwin County, Alabama .....	5160	0.7861	0.7446	99901	50281	0.7654
01020 .....	Barbour County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01030 .....	Bibb County, Alabama .....	01	0.7432	0.8959	13820	50002	0.8196
01040 .....	Blount County, Alabama .....	1000	0.9000	0.8959	13820	50182	0.8980
01050 .....	Bullock County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01060 .....	Butler County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01070 .....	Calhoun County, Alabama .....	0450	0.7682	0.7682	11500	11500	0.7682
01080 .....	Chambers County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01090 .....	Cherokee County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01100 .....	Chilton County, Alabama .....	01	0.7432	0.8959	13820	50002	0.8196
01110 .....	Choctaw County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01120 .....	Clarke County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01130 .....	Clay County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01140 .....	Cleburne County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01150 .....	Coffee County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01160 .....	Colbert County, Alabama .....	2650	0.8272	0.8272	22520	22520	0.8272
01170 .....	Conecuh County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01180 .....	Coosa County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01190 .....	Covington County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01200 .....	Crenshaw County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01210 .....	Cullman County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01220 .....	Dale County, Alabama .....	2180	0.7701	0.7446	99901	50214	0.7574
01230 .....	Dallas County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01240 .....	De Kalb County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01250 .....	Elmore County, Alabama .....	5240	0.8618	0.8618	33860	50284	0.8618
01260 .....	Escambia County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01270 .....	Etowah County, Alabama .....	2880	0.7938	0.7938	23460	23460	0.7938
01280 .....	Fayette County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01290 .....	Franklin County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01300 .....	Geneva County, Alabama .....	01	0.7432	0.7721	20020	50003	0.7577
01310 .....	Greene County, Alabama .....	01	0.7432	0.8645	46220	50005	0.8039
01320 .....	Hale County, Alabama .....	01	0.7432	0.8645	46220	50005	0.8039
01330 .....	Henry County, Alabama .....	01	0.7432	0.7721	20020	50003	0.7577
01340 .....	Houston County, Alabama .....	2180	0.7701	0.7721	20020	50215	0.7711
01350 .....	Jackson County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01360 .....	Jefferson County, Alabama .....	1000	0.9000	0.8959	13820	50182	0.8980
01370 .....	Lamar County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01380 .....	Lauderdale County, Alabama .....	2650	0.8272	0.8272	22520	22520	0.8272
01390 .....	Lawrence County, Alabama .....	2030	0.8469	0.8469	19460	19460	0.8469
01400 .....	Lee County, Alabama .....	0580	0.8100	0.8100	12220	12220	0.8100
01410 .....	Limestone County, Alabama .....	3440	0.9146	0.9146	26620	26620	0.9146
01420 .....	Lowndes County, Alabama .....	01	0.7432	0.8618	33860	50004	0.8025
01430 .....	Macon County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01440 .....	Madison County, Alabama .....	3440	0.9146	0.9146	26620	26620	0.9146
01450 .....	Marengo County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01460 .....	Marion County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01470 .....	Marshall County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01480 .....	Mobile County, Alabama .....	5160	0.7861	0.7891	33660	33660	0.7876
01490 .....	Monroe County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01500 .....	Montgomery County, Alabama .....	5240	0.8618	0.8618	33860	50284	0.8618
01510 .....	Morgan County, Alabama .....	2030	0.8469	0.8469	19460	19460	0.8469
01520 .....	Perry County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01530 .....	Pickens County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01540 .....	Pike County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01550 .....	Randolph County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01560 .....	Russell County, Alabama .....	1800	0.8560	0.8560	17980	50203	0.8560
01570 .....	St Clair County, Alabama .....	1000	0.9000	0.8959	13820	50182	0.8980
01580 .....	Shelby County, Alabama .....	1000	0.9000	0.8959	13820	50182	0.8980
01590 .....	Sumter County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01600 .....	Talladega County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01610 .....	Tallapoosa County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01620 .....	Tuscaloosa County, Alabama .....	8600	0.8764	0.8645	46220	50342	0.8705
01630 .....	Walker County, Alabama .....	01	0.7432	0.8959	13820	50002	0.8196
01640 .....	Washington County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
01650 .....	Wilcox County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
01660 .....	Winston County, Alabama .....	01	0.7432	0.7446	99901	50001	0.7439
02013 .....	Aleutians County East, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02016 .....	Aleutians County West, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02020 .....	Anchorage County, Alaska .....	0380	1.1784	1.1895	11260	50169	1.1840
02030 .....	Angoon County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02040 .....	Barrow-North Slope County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02050 .....	Bethel County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02060 .....	Bristol Bay Borough County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02068 .....	Denali County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02070 .....	Bristol Bay County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02080 .....	Cordova-Mc Carthy County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02090 .....	Fairbanks County, Alaska .....	02	1.1888	1.1408	21820	21820	1.1648
02100 .....	Haines County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02110 .....	Juneau County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02120 .....	Kenai-Cook Inlet County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02122 .....	Kenai Peninsula Borough, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02130 .....	Ketchikan County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02140 .....	Kobuk County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02150 .....	Kodiak County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02160 .....	Kuskokwin County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02164 .....	Lake and Peninsula Borough, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02170 .....	Matanuska County, Alaska .....	02	1.1888	1.1895	11260	50006	1.1892
02180 .....	Nome County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02185 .....	North Slope Borough, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02188 .....	Northwest Arctic Borough, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02190 .....	Outer Ketchikan County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02200 .....	Prince Of Wales County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02201 .....	Prince of Wales-Outer Ketchikan Census Area, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02210 .....	Seward County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02220 .....	Sitka County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02230 .....	Skagway-Yakutat County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02231 .....	Skagway-Yakutat-Angoon Census Area, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02232 .....	Skagway-Hoonah-Angoon Census Area, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02240 .....	Southeast Fairbanks County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02250 .....	Upper Yukon County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02260 .....	Valdez-Chitna-Whitier County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02261 .....	Valdez-Cordove Census Area, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02270 .....	Wade Hampton County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02280 .....	Wrangell-Petersburg County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02282 .....	Yakutat Borough, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
02290 .....	Yukon-Koyukuk County, Alaska .....	02	1.1888	1.1977	99902	99902	1.1933
03000 .....	Apache County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03010 .....	Cochise County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03020 .....	Coconino County, Arizona .....	2620	1.1845	1.2092	22380	22380	1.1969
03030 .....	Gila County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03040 .....	Graham County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03050 .....	Greenlee County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03055 .....	La Paz County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03060 .....	Maricopa County, Arizona .....	6200	1.0127	1.0127	38060	38060	1.0127
03070 .....	Mohave County, Arizona .....	4120	1.1155	0.8768	99903	50260	0.9962
03080 .....	Navajo County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03090 .....	Pima County, Arizona .....	8520	0.9007	0.9007	46060	46060	0.9007
03100 .....	Pinal County, Arizona .....	6200	1.0127	1.0127	38060	38060	1.0127
03110 .....	Santa Cruz County, Arizona .....	03	0.9045	0.8768	99903	50007	0.8907
03120 .....	Yavapai County, Arizona .....	03	0.9045	0.9869	39140	39140	0.9457
03130 .....	Yuma County, Arizona .....	9360	0.9126	0.9126	49740	49740	0.9126
04000 .....	Arkansas County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04010 .....	Ashley County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04020 .....	Baxter County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04030 .....	Benton County, Arkansas .....	2580	0.8661	0.8661	22220	50221	0.8661
04040 .....	Boone County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04050 .....	Bradley County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04060 .....	Calhoun County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04070 .....	Carroll County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04080 .....	Chicot County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04090 .....	Clark County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
04100 .....	Clay County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04110 .....	Cleburne County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04120 .....	Cleveland County, Arkansas .....	04	0.7744	0.8680	38220	50012	0.8212
04130 .....	Columbia County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04140 .....	Conway County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04150 .....	Craighead County, Arkansas .....	3700	0.7911	0.7911	27860	50251	0.7911
04160 .....	Crawford County, Arkansas .....	2720	0.8246	0.8230	22900	50224	0.8238
04170 .....	Crittenden County, Arkansas .....	4920	0.9416	0.9397	32820	50278	0.9407
04180 .....	Cross County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04190 .....	Dallas County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04200 .....	Desha County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04210 .....	Drew County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04220 .....	Faulkner County, Arkansas .....	4400	0.8747	0.8747	30780	50265	0.8747
04230 .....	Franklin County, Arkansas .....	04	0.7744	0.8230	22900	50009	0.7987
04240 .....	Fulton County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04250 .....	Garland County, Arkansas .....	04	0.7744	0.9005	26300	26300	0.8375
04260 .....	Grant County, Arkansas .....	04	0.7744	0.8747	30780	50011	0.8246
04270 .....	Greene County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04280 .....	Hempstead County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04290 .....	Hot Spring County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04300 .....	Howard County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04310 .....	Independence County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04320 .....	Izard County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04330 .....	Jackson County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04340 .....	Jefferson County, Arkansas .....	6240	0.8680	0.8680	38220	50300	0.8680
04350 .....	Johnson County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04360 .....	Lafayette County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04370 .....	Lawrence County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04380 .....	Lee County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04390 .....	Lincoln County, Arkansas .....	04	0.7744	0.8680	38220	50012	0.8212
04400 .....	Little River County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04410 .....	Logan County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04420 .....	Lonoke County, Arkansas .....	4400	0.8747	0.8747	30780	50265	0.8747
04430 .....	Madison County, Arkansas .....	04	0.7744	0.8661	22220	50008	0.8203
04440 .....	Marion County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04450 .....	Miller County, Arkansas .....	8360	0.8283	0.8283	45500	45500	0.8283
04460 .....	Mississippi County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04470 .....	Monroe County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04480 .....	Montgomery County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04490 .....	Nevada County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04500 .....	Newton County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04510 .....	Ouachita County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04520 .....	Perry County, Arkansas .....	04	0.7744	0.8747	30780	50011	0.8246
04530 .....	Phillips County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04540 .....	Pike County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04550 .....	Poinsett County, Arkansas .....	04	0.7744	0.7911	27860	50010	0.7828
04560 .....	Polk County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04570 .....	Pope County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04580 .....	Prairie County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04590 .....	Pulaski County, Arkansas .....	4400	0.8747	0.8747	30780	50265	0.8747
04600 .....	Randolph County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04610 .....	St Francis County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04620 .....	Saline County, Arkansas .....	4400	0.8747	0.8747	30780	50265	0.8747
04630 .....	Scott County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04640 .....	Searcy County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04650 .....	Sebastian County, Arkansas .....	2720	0.8246	0.8230	22900	50224	0.8238
04660 .....	Sevier County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04670 .....	Sharp County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04680 .....	Stone County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04690 .....	Union County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04700 .....	Van Buren County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04710 .....	Washington County, Arkansas .....	2580	0.8661	0.8661	22220	50221	0.8661
04720 .....	White County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04730 .....	Woodruff County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
04740 .....	Yell County, Arkansas .....	04	0.7744	0.7466	99904	99904	0.7605
05000 .....	Alameda County, California .....	5775	1.5346	1.5346	36084	36084	1.5346

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
05010 .....	Alpine County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05020 .....	Amador County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05030 .....	Butte County, California .....	1620	1.0511	1.0511	17020	17020	1.0511
05040 .....	Calaveras County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05050 .....	Colusa County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05060 .....	Contra Costa County, California .....	5775	1.5346	1.5346	36084	36084	1.5346
05070 .....	Del Norte County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05080 .....	Eldorado County, California .....	6920	1.3143	1.2969	40900	50315	1.3056
05090 .....	Fresno County, California .....	2840	1.0428	1.0538	23420	23420	1.0483
05100 .....	Glenn County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05110 .....	Humboldt County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05120 .....	Imperial County, California .....	05	1.0775	0.8906	20940	20940	0.9841
05130 .....	Inyo County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05140 .....	Kern County, California .....	0680	1.0470	1.0470	12540	12540	1.0470
05150 .....	Kings County, California .....	05	1.0775	1.0036	25260	25260	1.0406
05160 .....	Lake County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05170 .....	Lassen County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05200 .....	Los Angeles County, California .....	4480	1.1783	1.1783	31084	31084	1.1783
05210 .....	Los Angeles County, California .....	4480	1.1783	1.1783	31084	31084	1.1783
05300 .....	Madera County, California .....	2840	1.0428	0.8713	31460	31460	0.9571
05310 .....	Marin County, California .....	7360	1.4994	1.4994	41884	41884	1.4994
05320 .....	Mariposa County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05330 .....	Mendocino County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05340 .....	Merced County, California .....	4940	1.1109	1.1109	32900	32900	1.1109
05350 .....	Modoc County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05360 .....	Mono County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05370 .....	Monterey County, California .....	7120	1.4128	1.4128	41500	41500	1.4128
05380 .....	Napa County, California .....	8720	1.3983	1.2643	34900	34900	1.3313
05390 .....	Nevada County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05400 .....	Orange County, California .....	5945	1.1559	1.1559	42044	42044	1.1559
05410 .....	Placer County, California .....	6920	1.3143	1.2969	40900	50315	1.3056
05420 .....	Plumas County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05430 .....	Riverside County, California .....	6780	1.1027	1.1027	40140	40140	1.1027
05440 .....	Sacramento County, California .....	6920	1.3143	1.2969	40900	50315	1.3056
05450 .....	San Benito County, California .....	05	1.0775	1.5099	41940	50013	1.2937
05460 .....	San Bernardino County, California .....	6780	1.1027	1.1027	40140	40140	1.1027
05470 .....	San Diego County, California .....	7320	1.1413	1.1413	41740	41740	1.1413
05480 .....	San Francisco County, California .....	7360	1.4994	1.4994	41884	41884	1.4994
05490 .....	San Joaquin County, California .....	8120	1.1307	1.1307	44700	44700	1.1307
05500 .....	San Luis Obispo County, California .....	7460	1.1349	1.1349	42020	42020	1.1349
05510 .....	San Mateo County, California .....	7360	1.4994	1.4994	41884	41884	1.4994
05520 .....	Santa Barbara County, California .....	7480	1.1694	1.1694	42060	42060	1.1694
05530 .....	Santa Clara County, California .....	7400	1.5118	1.5099	41940	50323	1.5109
05540 .....	Santa Cruz County, California .....	7485	1.5166	1.5166	42100	42100	1.5166
05550 .....	Shasta County, California .....	6690	1.2203	1.2203	39820	39820	1.2203
05560 .....	Sierra County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05570 .....	Siskiyou County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05580 .....	Solano County, California .....	8720	1.3983	1.4936	46700	46700	1.4460
05590 .....	Sonoma County, California .....	7500	1.3493	1.3493	42220	42220	1.3493
05600 .....	Stanislaus County, California .....	5170	1.1885	1.1885	33700	33700	1.1885
05610 .....	Sutter County, California .....	9340	1.0921	1.0921	49700	49700	1.0921
05620 .....	Tehama County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05630 .....	Trinity County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05640 .....	Tulare County, California .....	8780	1.0123	1.0123	47300	47300	1.0123
05650 .....	Tuolumne County, California .....	05	1.0775	1.1054	99905	99905	1.0915
05660 .....	Ventura County, California .....	8735	1.1622	1.1622	37100	37100	1.1622
05670 .....	Yolo County, California .....	9270	0.9950	1.2969	40900	50351	1.1460
05680 .....	Yuba County, California .....	9340	1.0921	1.0921	49700	49700	1.0921
06000 .....	Adams County, Colorado .....	2080	1.0723	1.0723	19740	50211	1.0723
06010 .....	Alamosa County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06020 .....	Arapahoe County, Colorado .....	2080	1.0723	1.0723	19740	50211	1.0723
06030 .....	Archuleta County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06040 .....	Baca County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06050 .....	Bent County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06060 .....	Boulder County, Colorado .....	1125	0.9734	0.9734	14500	14500	0.9734
06070 .....	Chaffee County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
06080 .....	Cheyenne County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06090 .....	Clear Creek County, Colorado .....	06	0.9380	1.0723	19740	50015	1.0052
06100 .....	Conejos County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06110 .....	Costilla County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06120 .....	Crowley County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06130 .....	Custer County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06140 .....	Delta County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06150 .....	Denver County, Colorado .....	2080	1.0723	1.0723	19740	50211	1.0723
06160 .....	Dolores County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06170 .....	Douglas County, Colorado .....	2080	1.0723	1.0723	19740	50211	1.0723
06180 .....	Eagle County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06190 .....	Elbert County, Colorado .....	06	0.9380	1.0723	19740	50015	1.0052
06200 .....	El Paso County, Colorado .....	1720	0.9468	0.9468	17820	50200	0.9468
06210 .....	Fremont County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06220 .....	Garfield County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06230 .....	Gilpin County, Colorado .....	06	0.9380	1.0723	19740	50015	1.0052
06240 .....	Grand County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06250 .....	Gunnison County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06260 .....	Hinsdale County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06270 .....	Huerfano County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06280 .....	Jackson County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06290 .....	Jefferson County, Colorado .....	2080	1.0723	1.0723	19740	50211	1.0723
06300 .....	Kiowa County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06310 .....	Kit Carson County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06320 .....	Lake County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06330 .....	La Plata County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06340 .....	Larimer County, Colorado .....	2670	1.0122	1.0122	22660	22660	1.0122
06350 .....	Las Animas County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06360 .....	Lincoln County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06370 .....	Logan County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06380 .....	Mesa County, Colorado .....	2995	0.9550	0.9550	24300	24300	0.9550
06390 .....	Mineral County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06400 .....	Moffat County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06410 .....	Montezuma County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06420 .....	Montrose County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06430 .....	Morgan County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06440 .....	Otero County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06450 .....	Ouray County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06460 .....	Park County, Colorado .....	06	0.9380	1.0723	19740	50015	1.0052
06470 .....	Phillips County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06480 .....	Pitkin County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06490 .....	Prowers County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06500 .....	Pueblo County, Colorado .....	6560	0.8623	0.8623	39380	39380	0.8623
06510 .....	Rio Blanco County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06520 .....	Rio Grande County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06530 .....	Routt County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06540 .....	Saguache County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06550 .....	San Juan County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06560 .....	San Miguel County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06570 .....	Sedgwick County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06580 .....	Summit County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06590 .....	Teller County, Colorado .....	06	0.9380	0.9468	17820	50014	0.9424
06600 .....	Washington County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06610 .....	Weld County, Colorado .....	3060	0.9570	0.9570	24540	24540	0.9570
06620 .....	Yuma County, Colorado .....	06	0.9380	0.9380	99906	99906	0.9380
06630 .....	Broomfield County, Colorado .....	2080	1.0723	1.0723	19740	50211	1.0723
07000 .....	Fairfield County, Connecticut .....	5483	1.2196	1.2592	14860	14860	1.2394
07010 .....	Hartford County, Connecticut .....	3283	1.1073	1.1073	25540	25540	1.1073
07020 .....	Litchfield County, Connecticut .....	3283	1.1073	1.1073	25540	25540	1.1073
07030 .....	Middlesex County, Connecticut .....	3283	1.1073	1.1073	25540	25540	1.1073
07040 .....	New Haven County, Connecticut .....	5483	1.2196	1.1887	35300	35300	1.2042
07050 .....	New London County, Connecticut .....	5523	1.1345	1.1345	35980	35980	1.1345
07060 .....	Tolland County, Connecticut .....	3283	1.1073	1.1073	25540	25540	1.1073
07070 .....	Windham County, Connecticut .....	07	1.1730	1.1730	99907	99907	1.1730
08000 .....	Kent County, Delaware .....	2190	0.9776	0.9776	20100	20100	0.9776
08010 .....	New Castle County, Delaware .....	9160	1.0527	1.0471	48864	50349	1.0499

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
08020 .....	Sussex County, Delaware .....	08	0.9579	0.9579	99908	99908	0.9579
09000 .....	Washington Dc County, Dist Of Col .....	8840	1.0976	1.0926	47894	47894	1.0951
10000 .....	Alachua County, Florida .....	2900	0.9388	0.9388	23540	50228	0.9388
10010 .....	Baker County, Florida .....	10	0.8677	0.9290	27260	50018	0.8984
10020 .....	Bay County, Florida .....	6015	0.8005	0.8005	37460	37460	0.8005
10030 .....	Bradford County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10040 .....	Brevard County, Florida .....	4900	0.9839	0.9839	37340	37340	0.9839
10050 .....	Broward County, Florida .....	2680	1.0432	1.0432	22744	22744	1.0432
10060 .....	Calhoun County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10070 .....	Charlotte County, Florida .....	6580	0.9255	0.9255	39460	39460	0.9255
10080 .....	Citrus County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10090 .....	Clay County, Florida .....	3600	0.9299	0.9290	27260	50247	0.9295
10100 .....	Collier County, Florida .....	5345	1.0139	1.0139	34940	34940	1.0139
10110 .....	Columbia County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10120 .....	Dade County, Florida .....	5000	0.9750	0.9750	33124	33124	0.9750
10130 .....	De Soto County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10140 .....	Dixie County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10150 .....	Duval County, Florida .....	3600	0.9299	0.9290	27260	50247	0.9295
10160 .....	Escambia County, Florida .....	6080	0.8096	0.8096	37860	37860	0.8096
10170 .....	Flagler County, Florida .....	2020	0.9325	0.8568	99910	50210	0.8947
10180 .....	Franklin County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10190 .....	Gadsden County, Florida .....	8240	0.8688	0.8688	45220	50337	0.8688
10200 .....	Gilchrist County, Florida .....	10	0.8677	0.9388	23540	50017	0.9033
10210 .....	Glades County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10220 .....	Gulf County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10230 .....	Hamilton County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10240 .....	Hardee County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10250 .....	Hendry County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10260 .....	Hernando County, Florida .....	8280	0.9233	0.9233	45300	45300	0.9233
10270 .....	Highlands County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10280 .....	Hillsborough County, Florida .....	8280	0.9233	0.9233	45300	45300	0.9233
10290 .....	Holmes County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10300 .....	Indian River County, Florida .....	10	0.8677	0.9434	46940	46940	0.9056
10310 .....	Jackson County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10320 .....	Jefferson County, Florida .....	10	0.8677	0.8688	45220	50019	0.8683
10330 .....	Lafayette County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10340 .....	Lake County, Florida .....	5960	0.9464	0.9464	36740	36740	0.9464
10350 .....	Lee County, Florida .....	2700	0.9356	0.9356	15980	15980	0.9356
10360 .....	Leon County, Florida .....	8240	0.8688	0.8688	45220	50337	0.8688
10370 .....	Levy County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10380 .....	Liberty County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10390 .....	Madison County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10400 .....	Manatee County, Florida .....	7510	0.9639	0.9639	42260	42260	0.9639
10410 .....	Marion County, Florida .....	5790	0.8925	0.8925	36100	36100	0.8925
10420 .....	Martin County, Florida .....	2710	1.0123	1.0123	38940	38940	1.0123
10430 .....	Monroe County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10440 .....	Nassau County, Florida .....	3600	0.9299	0.9290	27260	50247	0.9295
10450 .....	Okaloosa County, Florida .....	2750	0.8872	0.8872	23020	23020	0.8872
10460 .....	Okeechobee County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10470 .....	Orange County, Florida .....	5960	0.9464	0.9464	36740	36740	0.9464
10480 .....	Osceola County, Florida .....	5960	0.9464	0.9464	36740	36740	0.9464
10490 .....	Palm Beach County, Florida .....	8960	1.0067	1.0067	48424	48424	1.0067
10500 .....	Pasco County, Florida .....	8280	0.9233	0.9233	45300	45300	0.9233
10510 .....	Pinellas County, Florida .....	8280	0.9233	0.9233	45300	45300	0.9233
10520 .....	Polk County, Florida .....	3980	0.8912	0.8912	29460	29460	0.8912
10530 .....	Putnam County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10540 .....	Johns County, Florida .....	3600	0.9299	0.9290	27260	50247	0.9295
10550 .....	St Lucie County, Florida .....	2710	1.0123	1.0123	38940	38940	1.0123
10560 .....	Santa Rosa County, Florida .....	6080	0.8096	0.8096	37860	37860	0.8096
10570 .....	Sarasota County, Florida .....	7510	0.9639	0.9639	42260	42260	0.9639
10580 .....	Seminole County, Florida .....	5960	0.9464	0.9464	36740	36740	0.9464
10590 .....	Sumter County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10600 .....	Suwannee County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10610 .....	Taylor County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10620 .....	Union County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10630 .....	Volusia County, Florida .....	2020	0.9325	0.9299	19660	19660	0.9312



## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
10640 .....	Wakulla County, Florida .....	10	0.8677	0.8688	45220	50019	0.8683
10650 .....	Walton County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
10660 .....	Washington County, Florida .....	10	0.8677	0.8568	99910	50016	0.8623
11000 .....	Appling County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11010 .....	Atkinson County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11011 .....	Bacon County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11020 .....	Baker County, Georgia .....	11	0.8166	0.8628	10500	50021	0.8397
11030 .....	Baldwin County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11040 .....	Banks County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11050 .....	Barrow County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11060 .....	Bartow County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11070 .....	Ben Hill County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11080 .....	Berrien County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11090 .....	Bibb County, Georgia .....	4680	0.9277	0.9443	31420	50273	0.9360
11100 .....	Bleckley County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11110 .....	Brantley County, Georgia .....	11	0.8166	0.9311	15260	15260	0.8739
11120 .....	Brooks County, Georgia .....	11	0.8166	0.8866	46660	46660	0.8516
11130 .....	Bryan County, Georgia .....	7520	0.9461	0.9461	42340	42340	0.9461
11140 .....	Bulloch County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11150 .....	Burke County, Georgia .....	11	0.8166	0.9748	12260	50024	0.8957
11160 .....	Butts County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11161 .....	Calhoun County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11170 .....	Camden County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11180 .....	Candler County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11190 .....	Carroll County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11200 .....	Catoosa County, Georgia .....	1560	0.9088	0.9088	16860	50195	0.9088
11210 .....	Charlton County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11220 .....	Chatham County, Georgia .....	7520	0.9461	0.9461	42340	42340	0.9461
11230 .....	Chattahoochee County, Georgia .....	1800	0.8560	0.8560	17980	50203	0.8560
11240 .....	Chattooga County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11250 .....	Cherokee County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11260 .....	Clarke County, Georgia .....	0500	0.9855	0.9855	12020	50174	0.9855
11270 .....	Clay County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11280 .....	Clayton County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11281 .....	Clinch County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11290 .....	Cobb County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11291 .....	Coffee County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11300 .....	Colquitt County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11310 .....	Columbia County, Georgia .....	0600	0.9808	0.9748	12260	50176	0.9778
11311 .....	Cook County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11320 .....	Coweta County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11330 .....	Crawford County, Georgia .....	11	0.8166	0.9443	31420	50026	0.8805
11340 .....	Crisp County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11341 .....	Dade County, Georgia .....	1560	0.9088	0.9088	16860	50195	0.9088
11350 .....	Dawson County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11360 .....	Decatur County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11370 .....	De Kalb County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11380 .....	Dodge County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11381 .....	Dooly County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11390 .....	Dougherty County, Georgia .....	0120	0.8628	0.8628	10500	50163	0.8628
11400 .....	Douglas County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11410 .....	Early County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11420 .....	Echols County, Georgia .....	11	0.8166	0.8866	46660	46660	0.8516
11421 .....	Effingham County, Georgia .....	7520	0.9461	0.9461	42340	42340	0.9461
11430 .....	Elbert County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11440 .....	Emanuel County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11441 .....	Evans County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11450 .....	Fannin County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11451 .....	Fayette County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11460 .....	Floyd County, Georgia .....	11	0.8166	0.9414	40660	40660	0.8790
11461 .....	Forsyth County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11462 .....	Franklin County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11470 .....	Fulton County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11471 .....	Gilmer County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11480 .....	Glascocock County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11490 .....	Glynn County, Georgia .....	11	0.8166	0.9311	15260	15260	0.8739

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
11500 .....	Gordon County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11510 .....	Grady County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11520 .....	Greene County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11530 .....	Gwinnett County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11540 .....	Habersham County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11550 .....	Hall County, Georgia .....	11	0.8166	0.8874	23580	23580	0.8520
11560 .....	Hancock County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11570 .....	Haralson County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11580 .....	Harris County, Georgia .....	1800	0.8560	0.8560	17980	50203	0.8560
11581 .....	Hart County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11590 .....	Heard County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11591 .....	Henry County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11600 .....	Houston County, Georgia .....	4680	0.9277	0.8645	47580	47580	0.8961
11601 .....	Irwin County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11610 .....	Jackson County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11611 .....	Jasper County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11612 .....	Jeff Davis County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11620 .....	Jefferson County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11630 .....	Jenkins County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11640 .....	Johnson County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11650 .....	Jones County, Georgia .....	4680	0.9277	0.9443	31420	50273	0.9360
11651 .....	Lamar County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11652 .....	Lanier County, Georgia .....	11	0.8166	0.8866	46660	46660	0.8516
11660 .....	Laurens County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11670 .....	Lee County, Georgia .....	0120	0.8628	0.8628	10500	50163	0.8628
11680 .....	Liberty County, Georgia .....	11	0.8166	.....	25980	25980	0.8973
11690 .....	Lincoln County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11691 .....	Long County, Georgia .....	11	0.8166	.....	25980	25980	0.8973
11700 .....	Lowndes County, Georgia .....	11	0.8166	0.8866	46660	46660	0.8516
11701 .....	Lumpkin County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11702 .....	Mc Duffie County, Georgia .....	0600	0.9808	0.9748	12260	50176	0.9778
11703 .....	Mc Intosh County, Georgia .....	11	0.8166	0.9311	15260	15260	0.8739
11710 .....	Macon County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11720 .....	Madison County, Georgia .....	0500	0.9855	0.9855	12020	50174	0.9855
11730 .....	Marion County, Georgia .....	11	0.8166	0.8560	17980	50025	0.8363
11740 .....	Meriwether County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11741 .....	Miller County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11750 .....	Mitchell County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11760 .....	Monroe County, Georgia .....	11	0.8166	0.9443	31420	50026	0.8805
11770 .....	Montgomery County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11771 .....	Morgan County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11772 .....	Murray County, Georgia .....	11	0.8166	0.9079	19140	19140	0.8623
11780 .....	Muscogee County, Georgia .....	1800	0.8560	0.8560	17980	50203	0.8560
11790 .....	Newton County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11800 .....	Oconee County, Georgia .....	0500	0.9855	0.9855	12020	50174	0.9855
11801 .....	Oglethorpe County, Georgia .....	11	0.8166	0.9855	12020	50022	0.9011
11810 .....	Paulding County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11811 .....	Peach County, Georgia .....	4680	0.9277	0.7662	99911	50272	0.8470
11812 .....	Pickens County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11820 .....	Pierce County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11821 .....	Pike County, Georgia .....	11	0.8166	0.9793	12060	50023	0.8980
11830 .....	Polk County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11831 .....	Pulaski County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11832 .....	Putnam County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11833 .....	Quitman County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11834 .....	Rabun County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11835 .....	Randolph County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11840 .....	Richmond County, Georgia .....	0600	0.9808	0.9748	12260	50176	0.9778
11841 .....	Rockdale County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11842 .....	Schley County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11850 .....	Screven County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11851 .....	Seminole County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11860 .....	Spalding County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11861 .....	Stephens County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11862 .....	Stewart County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11870 .....	Sumter County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
11880 .....	Talbot County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11881 .....	Taliaferro County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11882 .....	Tattnall County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11883 .....	Taylor County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11884 .....	Telfair County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11885 .....	Terrell County, Georgia .....	11	0.8166	0.8628	10500	50021	0.8397
11890 .....	Thomas County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11900 .....	Tift County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11901 .....	Toombs County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11902 .....	Towns County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11903 .....	Treutlen County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11910 .....	Troup County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11911 .....	Turner County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11912 .....	Twiggs County, Georgia .....	4680	0.9277	0.9443	31420	50273	0.9360
11913 .....	Union County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11920 .....	Upson County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11921 .....	Walker County, Georgia .....	1560	0.9088	0.9088	16860	50195	0.9088
11930 .....	Walton County, Georgia .....	0520	0.9793	0.9793	12060	50175	0.9793
11940 .....	Ware County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11941 .....	Warren County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11950 .....	Washington County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11960 .....	Wayne County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11961 .....	Webster County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11962 .....	Wheeler County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11963 .....	White County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11970 .....	Whitfield County, Georgia .....	11	0.8166	0.9079	19140	19140	0.8623
11971 .....	Wilcox County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11972 .....	Wilkes County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11973 .....	Wilkinson County, Georgia .....	11	0.8166	0.7662	99911	50020	0.7914
11980 .....	Worth County, Georgia .....	11	0.8166	0.8628	10500	50021	0.8397
12005 .....	Kalawao County, Hawaii .....	12	1.0551	1.0551	99912	99912	1.0551
12010 .....	Hawaii County, Hawaii .....	12	1.0551	1.0551	99912	99912	1.0551
12020 .....	Honolulu County, Hawaii .....	3320	1.1214	1.1214	26180	26180	1.1214
12040 .....	Kauai County, Hawaii .....	12	1.0551	1.0551	99912	99912	1.0551
12050 .....	Maui County, Hawaii .....	12	1.0551	1.0551	99912	99912	1.0551
13000 .....	Ada County, Idaho .....	1080	0.9052	0.9052	14260	50184	0.9052
13010 .....	Adams County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13020 .....	Bannock County, Idaho .....	6340	0.9351	0.9351	38540	50302	0.9351
13030 .....	Bear Lake County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13040 .....	Benewah County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13050 .....	Bingham County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13060 .....	Blaine County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13070 .....	Boise County, Idaho .....	13	0.9097	0.9052	14260	50027	0.9075
13080 .....	Bonner County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13090 .....	Bonneville County, Idaho .....	13	0.9097	0.9420	26820	26820	0.9259
13100 .....	Boundary County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13110 .....	Butte County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13120 .....	Camas County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13130 .....	Canyon County, Idaho .....	1080	0.9052	0.9052	14260	50184	0.9052
13140 .....	Caribou County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13150 .....	Cassia County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13160 .....	Clark County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13170 .....	Clearwater County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13180 .....	Custer County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13190 .....	Elmore County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13200 .....	Franklin County, Idaho .....	13	0.9097	0.9164	30860	50029	0.9131
13210 .....	Fremont County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13220 .....	Gem County, Idaho .....	13	0.9097	0.9052	14260	50027	0.9075
13230 .....	Gooding County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13240 .....	Idaho County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13250 .....	Jefferson County, Idaho .....	13	0.9097	0.9420	26820	26820	0.9259
13260 .....	Jerome County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13270 .....	Kootenai County, Idaho .....	13	0.9097	0.9647	17660	17660	0.9372
13280 .....	Latah County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13290 .....	Lemhi County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13300 .....	Lewis County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
13310 .....	Lincoln County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13320 .....	Madison County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13330 .....	Minidoka County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13340 .....	Nez Perce County, Idaho .....	13	0.9097	0.9886	30300	50028	0.9492
13350 .....	Oneida County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13360 .....	Owyhee County, Idaho .....	13	0.9097	0.9052	14260	50027	0.9075
13370 .....	Payette County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13380 .....	Power County, Idaho .....	13	0.9097	0.9351	38540	50030	0.9224
13390 .....	Shoshone County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13400 .....	Teton County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13410 .....	Twin Falls County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13420 .....	Valley County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
13430 .....	Washington County, Idaho .....	13	0.9097	0.8037	99913	99913	0.8567
14000 .....	Adams County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14010 .....	Alexander County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14020 .....	Bond County, Illinois .....	14	0.8301	0.8954	41180	50035	0.8628
14030 .....	Boone County, Illinois .....	6880	0.9984	0.9984	40420	40420	0.9984
14040 .....	Brown County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14050 .....	Bureau County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14060 .....	Calhoun County, Illinois .....	14	0.8301	0.8954	41180	50035	0.8628
14070 .....	Carroll County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14080 .....	Cass County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14090 .....	Champaign County, Illinois .....	1400	0.9594	0.9594	16580	50190	0.9594
14100 .....	Christian County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14110 .....	Clark County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14120 .....	Clay County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14130 .....	Clinton County, Illinois .....	7040	0.8962	0.8954	41180	50318	0.8958
14140 .....	Coles County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14141 .....	Cook County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14150 .....	Crawford County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14160 .....	Cumberland County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14170 .....	De Kalb County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14180 .....	De Witt County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14190 .....	Douglas County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14250 .....	Du Page County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14310 .....	Edgar County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14320 .....	Edwards County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14330 .....	Effingham County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14340 .....	Fayette County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14350 .....	Ford County, Illinois .....	14	0.8301	0.9594	16580	50032	0.8948
14360 .....	Franklin County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14370 .....	Fulton County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14380 .....	Gallatin County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14390 .....	Greene County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14400 .....	Grundy County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14410 .....	Hamilton County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14420 .....	Hancock County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14421 .....	Hardin County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14440 .....	Henderson County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14450 .....	Henry County, Illinois .....	1960	0.8724	0.8724	19340	50208	0.8724
14460 .....	Iroquois County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14470 .....	Jackson County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14480 .....	Jasper County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14490 .....	Jefferson County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14500 .....	Jersey County, Illinois .....	7040	0.8962	0.8954	41180	50318	0.8958
14510 .....	Jo Daviess County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14520 .....	Johnson County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14530 .....	Kane County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14540 .....	Kankakee County, Illinois .....	3740	1.0721	1.0721	28100	28100	1.0721
14550 .....	Kendall County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14560 .....	Knox County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14570 .....	Lake County, Illinois .....	1600	1.0783	1.0429	29404	50196	1.0606
14580 .....	La Salle County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14590 .....	Lawrence County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14600 .....	Lee County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14610 .....	Livingston County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
14620 .....	Logan County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14630 .....	McDonough County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14640 .....	Mc Henry County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14650 .....	McLean County, Illinois .....	1040	0.9075	0.9075	14060	14060	0.9075
14660 .....	Macon County, Illinois .....	2040	0.8067	0.8067	19500	19500	0.8067
14670 .....	Macoupin County, Illinois .....	14	0.8301	0.8954	41180	50035	0.8628
14680 .....	Madison County, Illinois .....	7040	0.8962	0.8954	41180	50318	0.8958
14690 .....	Marion County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14700 .....	Marshall County, Illinois .....	14	0.8301	0.8870	37900	50034	0.8586
14710 .....	Mason County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14720 .....	Massac County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14730 .....	Menard County, Illinois .....	7880	0.8792	0.8792	44100	44100	0.8792
14740 .....	Mercer County, Illinois .....	14	0.8301	0.8724	19340	50033	0.8513
14750 .....	Monroe County, Illinois .....	7040	0.8962	0.8954	41180	50318	0.8958
14760 .....	Montgomery County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14770 .....	Morgan County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14780 .....	Moultrie County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14790 .....	Ogle County, Illinois .....	6880	0.9984	0.8271	99914	50314	0.9128
14800 .....	Peoria County, Illinois .....	6120	0.8870	0.8870	37900	50298	0.8870
14810 .....	Perry County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14820 .....	Piatt County, Illinois .....	14	0.8301	0.9594	16580	50032	0.8948
14830 .....	Pike County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14831 .....	Pope County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14850 .....	Pulaski County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14860 .....	Putnam County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14870 .....	Randolph County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14880 .....	Richland County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14890 .....	Rock Island County, Illinois .....	1960	0.8724	0.8724	19340	50208	0.8724
14900 .....	St Clair County, Illinois .....	7040	0.8962	0.8954	41180	50318	0.8958
14910 .....	Saline County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14920 .....	Sangamon County, Illinois .....	7880	0.8792	0.8792	44100	44100	0.8792
14921 .....	Schuyler County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14940 .....	Scott County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14950 .....	Shelby County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14960 .....	Stark County, Illinois .....	14	0.8301	0.8870	37900	50034	0.8586
14970 .....	Stephenson County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14980 .....	Tazewell County, Illinois .....	6120	0.8870	0.8870	37900	50298	0.8870
14981 .....	Union County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14982 .....	Vermilion County, Illinois .....	14	0.8301	0.9028	19180	19180	0.8665
14983 .....	Wabash County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14984 .....	Warren County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14985 .....	Washington County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14986 .....	Wayne County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14987 .....	White County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14988 .....	Whiteside County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14989 .....	Will County, Illinois .....	1600	1.0783	1.0790	16974	16974	1.0787
14990 .....	Williamson County, Illinois .....	14	0.8301	0.8271	99914	50031	0.8286
14991 .....	Winnebago County, Illinois .....	6880	0.9984	0.9984	40420	40420	0.9984
14992 .....	Woodford County, Illinois .....	6120	0.8870	0.8870	37900	50298	0.8870
15000 .....	Adams County, Indiana .....	2760	0.9706	0.8624	99915	50225	0.9165
15010 .....	Allen County, Indiana .....	2760	0.9706	0.9793	23060	23060	0.9750
15020 .....	Bartholomew County, Indiana .....	15	0.8739	0.9588	18020	18020	0.9164
15030 .....	Benton County, Indiana .....	15	0.8739	0.8736	29140	50042	0.8738
15040 .....	Blackford County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15050 .....	Boone County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15060 .....	Brown County, Indiana .....	15	0.8739	0.9920	26900	50041	0.9330
15070 .....	Carroll County, Indiana .....	15	0.8739	0.8736	29140	50042	0.8738
15080 .....	Cass County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15090 .....	Clark County, Indiana .....	4520	0.9293	0.9251	31140	50269	0.9272
15100 .....	Clay County, Indiana .....	8320	0.8337	0.8304	45460	50338	0.8321
15110 .....	Clinton County, Indiana .....	3920	0.8736	0.8624	99915	50257	0.8680
15120 .....	Crawford County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15130 .....	Daviess County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15140 .....	Dearborn County, Indiana .....	1640	0.9734	0.9615	17140	50197	0.9675
15150 .....	Decatur County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15160 .....	De Kalb County, Indiana .....	2760	0.9706	0.8624	99915	50225	0.9165

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
15170 .....	Delaware County, Indiana .....	5280	0.8930	0.8930	34620	34620	0.8930
15180 .....	Dubois County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15190 .....	Elkhart County, Indiana .....	2330	0.9627	0.9627	21140	21140	0.9627
15200 .....	Fayette County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15210 .....	Floyd County, Indiana .....	4520	0.9293	0.9251	31140	50269	0.9272
15220 .....	Fountain County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15230 .....	Franklin County, Indiana .....	15	0.8739	0.9615	17140	50038	0.9177
15240 .....	Fulton County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15250 .....	Gibson County, Indiana .....	15	0.8739	0.8713	21780	50039	0.8726
15260 .....	Grant County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15270 .....	Greene County, Indiana .....	15	0.8739	0.8447	14020	50037	0.8593
15280 .....	Hamilton County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15290 .....	Hancock County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15300 .....	Harrison County, Indiana .....	4520	0.9293	0.9251	31140	50269	0.9272
15310 .....	Hendricks County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15320 .....	Henry County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15330 .....	Howard County, Indiana .....	3850	0.9508	0.9508	29020	29020	0.9508
15340 .....	Huntington County, Indiana .....	2760	0.9706	0.8624	99915	50225	0.9165
15350 .....	Jackson County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15360 .....	Jasper County, Indiana .....	15	0.8739	0.9395	23844	50040	0.9067
15370 .....	Jay County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15380 .....	Jefferson County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15390 .....	Jennings County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15400 .....	Johnson County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15410 .....	Knox County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15420 .....	Kosciusko County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15430 .....	Lagrange County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15440 .....	Lake County, Indiana .....	2960	0.9395	0.9395	23844	50230	0.9395
15450 .....	La Porte County, Indiana .....	15	0.8739	0.9399	33140	33140	0.9069
15460 .....	Lawrence County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15470 .....	Madison County, Indiana .....	3480	0.9865	0.8586	11300	11300	0.9226
15480 .....	Marion County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15490 .....	Marshall County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15500 .....	Martin County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15510 .....	Miami County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15520 .....	Monroe County, Indiana .....	1020	0.8447	0.8447	14020	50183	0.8447
15530 .....	Montgomery County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15540 .....	Morgan County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15550 .....	Newton County, Indiana .....	15	0.8739	0.9395	23844	50040	0.9067
15560 .....	Noble County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15570 .....	Ohio County, Indiana .....	1640	0.9734	0.9615	17140	50197	0.9675
15580 .....	Orange County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15590 .....	Owen County, Indiana .....	15	0.8739	0.8447	14020	50037	0.8593
15600 .....	Parke County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15610 .....	Perry County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15620 .....	Pike County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15630 .....	Porter County, Indiana .....	2960	0.9395	0.9395	23844	50230	0.9395
15640 .....	Posey County, Indiana .....	2440	0.8713	0.8713	21780	50219	0.8713
15650 .....	Pulaski County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15660 .....	Putnam County, Indiana .....	15	0.8739	0.9920	26900	50041	0.9330
15670 .....	Randolph County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15680 .....	Ripley County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15690 .....	Rush County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15700 .....	St Joseph County, Indiana .....	7800	0.9788	0.9788	43780	50333	0.9788
15710 .....	Scott County, Indiana .....	4520	0.9293	0.8624	99915	50268	0.8959
15720 .....	Shelby County, Indiana .....	3480	0.9865	0.9920	26900	50244	0.9893
15730 .....	Spencer County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15740 .....	Starke County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15750 .....	Steuben County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15760 .....	Sullivan County, Indiana .....	15	0.8739	0.8304	45460	50044	0.8522
15770 .....	Switzerland County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15780 .....	Tippecanoe County, Indiana .....	3920	0.8736	0.8736	29140	50258	0.8736
15790 .....	Tipton County, Indiana .....	3850	0.9508	0.9508	29020	29020	0.9508
15800 .....	Union County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15810 .....	Vanderburgh County, Indiana .....	2440	0.8713	0.8713	21780	50219	0.8713
15820 .....	Vermillion County, Indiana .....	8320	0.8337	0.8304	45460	50338	0.8321

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
15830 .....	Vigo County, Indiana .....	8320	0.8337	0.8304	45460	50338	0.8321
15840 .....	Wabash County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15850 .....	Warren County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15860 .....	Warrick County, Indiana .....	2440	0.8713	0.8713	21780	50219	0.8713
15870 .....	Washington County, Indiana .....	15	0.8739	0.9251	31140	50043	0.8995
15880 .....	Wayne County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15890 .....	Wells County, Indiana .....	2760	0.9706	0.9793	23060	23060	0.9750
15900 .....	White County, Indiana .....	15	0.8739	0.8624	99915	50036	0.8682
15910 .....	Whitley County, Indiana .....	2760	0.9706	0.9793	23060	23060	0.9750
16000 .....	Adair County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16010 .....	Adams County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16020 .....	Allamakee County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16030 .....	Appanoose County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16040 .....	Audubon County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16050 .....	Benton County, Iowa .....	16	0.8594	0.8825	16300	50045	0.8710
16060 .....	Black Hawk County, Iowa .....	8920	0.8557	0.8557	47940	50346	0.8557
16070 .....	Boone County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16080 .....	Bremer County, Iowa .....	16	0.8594	0.8557	47940	50049	0.8576
16090 .....	Buchanan County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16100 .....	Buena Vista County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16110 .....	Butler County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16120 .....	Calhoun County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16130 .....	Carroll County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16140 .....	Cass County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16150 .....	Cedar County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16160 .....	Cerro Gordo County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16170 .....	Cherokee County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16180 .....	Chickasaw County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16190 .....	Clarke County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16200 .....	Clay County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16210 .....	Clayton County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16220 .....	Clinton County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16230 .....	Crawford County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16240 .....	Dallas County, Iowa .....	2120	0.9669	0.9669	19780	50212	0.9669
16250 .....	Davis County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16260 .....	Decatur County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16270 .....	Delaware County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16280 .....	Des Moines County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16290 .....	Dickinson County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16300 .....	Dubuque County, Iowa .....	2200	0.9024	0.9024	20220	20220	0.9024
16310 .....	Emmet County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16320 .....	Fayette County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16330 .....	Floyd County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16340 .....	Franklin County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16350 .....	Fremont County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16360 .....	Greene County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16370 .....	Grundy County, Iowa .....	16	0.8594	0.8557	47940	50049	0.8576
16380 .....	Guthrie County, Iowa .....	16	0.8594	0.9669	19780	50046	0.9132
16390 .....	Hamilton County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16400 .....	Hancock County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16410 .....	Hardin County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16420 .....	Harrison County, Iowa .....	16	0.8594	0.9560	36540	50048	0.9077
16430 .....	Henry County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16440 .....	Howard County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16450 .....	Humboldt County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16460 .....	Ida County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16470 .....	Iowa County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16480 .....	Jackson County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16490 .....	Jasper County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16500 .....	Jefferson County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16510 .....	Johnson County, Iowa .....	3500	0.9747	0.9747	26980	50245	0.9747
16520 .....	Jones County, Iowa .....	16	0.8594	0.8825	16300	50045	0.8710
16530 .....	Keokuk County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16540 .....	Kossuth County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16550 .....	Lee County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16560 .....	Linn County, Iowa .....	1360	0.8825	0.8825	16300	50189	0.8825

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
16570 .....	Louisa County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16580 .....	Lucas County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16590 .....	Lyon County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16600 .....	Madison County, Iowa .....	16	0.8594	0.9669	19780	50046	0.9132
16610 .....	Mahaska County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16620 .....	Marion County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16630 .....	Marshall County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16640 .....	Mills County, Iowa .....	16	0.8594	0.9560	36540	50048	0.9077
16650 .....	Mitchell County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16660 .....	Monona County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16670 .....	Monroe County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16680 .....	Montgomery County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16690 .....	Muscatine County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16700 .....	OBrien County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16710 .....	Osceola County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16720 .....	Page County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16730 .....	Palo Alto County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16740 .....	Plymouth County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16750 .....	Pocahontas County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16760 .....	Polk County, Iowa .....	2120	0.9669	0.9669	19780	50212	0.9669
16770 .....	Pottawattamie County, Iowa .....	5920	0.9560	0.9560	36540	50295	0.9560
16780 .....	Poweshiek County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16790 .....	Ringgold County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16800 .....	Sac County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16810 .....	Scott County, Iowa .....	1960	0.8724	0.8724	19340	50208	0.8724
16820 .....	Shelby County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16830 .....	Sioux County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16840 .....	Story County, Iowa .....	16	0.8594	0.9536	11180	11180	0.9065
16850 .....	Tama County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16860 .....	Taylor County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16870 .....	Union County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16880 .....	Van Buren County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16890 .....	Wapello County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16900 .....	Warren County, Iowa .....	2120	0.9669	0.9669	19780	50212	0.9669
16910 .....	Washington County, Iowa .....	16	0.8594	0.9747	26980	50047	0.9171
16920 .....	Wayne County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16930 .....	Webster County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16940 .....	Winnebago County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16950 .....	Winneshiek County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16960 .....	Woodbury County, Iowa .....	7720	0.9416	0.9381	43580	50331	0.9399
16970 .....	Worth County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
16980 .....	Wright County, Iowa .....	16	0.8594	0.8509	99916	99916	0.8552
17000 .....	Allen County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17010 .....	Anderson County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17020 .....	Atchison County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17030 .....	Barber County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17040 .....	Barton County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17050 .....	Bourbon County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17060 .....	Brown County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17070 .....	Butler County, Kansas .....	9040	0.9175	0.9153	48620	50347	0.9164
17080 .....	Chase County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17090 .....	Chautauqua County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17100 .....	Cherokee County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17110 .....	Cheyenne County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17120 .....	Clark County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17130 .....	Clay County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17140 .....	Cloud County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17150 .....	Coffey County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17160 .....	Comanche County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17170 .....	Cowley County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17180 .....	Crawford County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17190 .....	Decatur County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17200 .....	Dickinson County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17210 .....	Doniphan County, Kansas .....	17	0.8040	0.9519	41140	50051	0.8780
17220 .....	Douglas County, Kansas .....	4150	0.8537	0.8537	29940	29940	0.8537
17230 .....	Edwards County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038



## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
17240 .....	Elk County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17250 .....	Ellis County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17260 .....	Ellsworth County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17270 .....	Finney County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17280 .....	Ford County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17290 .....	Franklin County, Kansas .....	17	0.8040	0.9476	28140	50050	0.8758
17300 .....	Geary County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17310 .....	Gove County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17320 .....	Graham County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17330 .....	Grant County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17340 .....	Gray County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17350 .....	Greeley County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17360 .....	Greenwood County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17370 .....	Hamilton County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17380 .....	Harper County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17390 .....	Harvey County, Kansas .....	9040	0.9175	0.9153	48620	50347	0.9164
17391 .....	Haskell County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17410 .....	Hodgeman County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17420 .....	Jackson County, Kansas .....	17	0.8040	0.8920	45820	50052	0.8480
17430 .....	Jefferson County, Kansas .....	17	0.8040	0.8920	45820	50052	0.8480
17440 .....	Jewell County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17450 .....	Johnson County, Kansas .....	3760	0.9490	0.9476	28140	50252	0.9483
17451 .....	Kearny County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17470 .....	Kingman County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17480 .....	Kiowa County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17490 .....	Labette County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17500 .....	Lane County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17510 .....	Leavenworth County, Kansas .....	3760	0.9490	0.9476	28140	50252	0.9483
17520 .....	Lincoln County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17530 .....	Linn County, Kansas .....	17	0.8040	0.9476	28140	50050	0.8758
17540 .....	Logan County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17550 .....	Lyon County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17560 .....	Mc Pherson County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17570 .....	Marion County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17580 .....	Marshall County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17590 .....	Meade County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17600 .....	Miami County, Kansas .....	3760	0.9490	0.9476	28140	50252	0.9483
17610 .....	Mitchell County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17620 .....	Montgomery County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17630 .....	Morris County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17640 .....	Morton County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17650 .....	Nemaha County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17660 .....	Neosho County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17670 .....	Ness County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17680 .....	Norton County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17690 .....	Osage County, Kansas .....	17	0.8040	0.8920	45820	50052	0.8480
17700 .....	Osborne County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17710 .....	Ottawa County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17720 .....	Pawnee County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17730 .....	Phillips County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17740 .....	Pottawatomie County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17750 .....	Pratt County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17760 .....	Rawlins County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17770 .....	Reno County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17780 .....	Republic County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17790 .....	Rice County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17800 .....	Riley County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17810 .....	Rooks County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17820 .....	Rush County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17830 .....	Russell County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17840 .....	Saline County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17841 .....	Scott County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17860 .....	Sedgwick County, Kansas .....	9040	0.9175	0.9153	48620	50347	0.9164
17870 .....	Seward County, Kansas .....	7	0.8040	0.8035	99917	99917	0.8038
17880 .....	Shawnee County, Kansas .....	8440	0.8920	0.8920	45820	50340	0.8920
17890 .....	Sheridan County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
17900 .....	Sherman County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17910 .....	Smith County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17920 .....	Stafford County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17921 .....	Stanton County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17940 .....	Stevens County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17950 .....	Sumner County, Kansas .....	17	0.8040	0.9153	48620	50053	0.8597
17960 .....	Thomas County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17970 .....	Trego County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17980 .....	Wabaunsee County, Kansas .....	17	0.8040	0.8920	45820	50052	0.8480
17981 .....	Wallace County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17982 .....	Washington County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17983 .....	Wichita County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17984 .....	Wilson County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17985 .....	Woodson County, Kansas .....	17	0.8040	0.8035	99917	99917	0.8038
17986 .....	Wyandotte County, Kansas .....	3760	0.9490	0.9476	28140	50252	0.9483
18000 .....	Adair County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18010 .....	Allen County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18020 .....	Anderson County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18030 .....	Ballard County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18040 .....	Barren County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18050 .....	Bath County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18060 .....	Bell County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18070 .....	Boone County, Kentucky .....	1640	0.9734	0.9615	17140	50197	0.9675
18080 .....	Bourbon County, Kentucky .....	4280	0.8988	0.9075	30460	30460	0.9032
18090 .....	Boyd County, Kentucky .....	3400	0.9477	0.9477	26580	26580	0.9477
18100 .....	Boyle County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18110 .....	Bracken County, Kentucky .....	18	0.7858	0.9615	17140	50055	0.8737
18120 .....	Breathitt County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18130 .....	Breckinridge County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18140 .....	Bullitt County, Kentucky .....	4520	0.9293	0.9251	31140	50269	0.9272
18150 .....	Butler County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18160 .....	Caldwell County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18170 .....	Calloway County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18180 .....	Campbell County, Kentucky .....	1640	0.9734	0.9615	17140	50197	0.9675
18190 .....	Carlisle County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18191 .....	Carroll County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18210 .....	Carter County, Kentucky .....	3400	0.9477	0.7766	99918	50243	0.8622
18220 .....	Casey County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18230 .....	Christian County, Kentucky .....	1660	0.8284	0.8284	17300	50198	0.8284
18240 .....	Clark County, Kentucky .....	4280	0.8988	0.9075	30460	30460	0.9032
18250 .....	Clay County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18260 .....	Clinton County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18270 .....	Crittenden County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18271 .....	Cumberland County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18290 .....	Daviess County, Kentucky .....	5990	0.8780	0.8780	36980	50296	0.8780
18291 .....	Edmonson County, Kentucky .....	18	0.7858	0.8211	14540	14540	0.8035
18310 .....	Elliott County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18320 .....	Estill County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18330 .....	Fayette County, Kentucky .....	4280	0.8988	0.9075	30460	30460	0.9032
18340 .....	Fleming County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18350 .....	Floyd County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18360 .....	Franklin County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18361 .....	Fulton County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18362 .....	Gallatin County, Kentucky .....	1640	0.9734	0.9615	17140	50197	0.9675
18390 .....	Garrard County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18400 .....	Grant County, Kentucky .....	1640	0.9734	0.9615	17140	50197	0.9675
18410 .....	Graves County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18420 .....	Grayson County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18421 .....	Green County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18440 .....	Greenup County, Kentucky .....	3400	0.9477	0.9477	26580	26580	0.9477
18450 .....	Hancock County, Kentucky .....	18	0.7858	0.8780	36980	50059	0.8319
18460 .....	Hardin County, Kentucky .....	18	0.7858	0.8802	21060	21060	0.8330
18470 .....	Harlan County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18480 .....	Harrison County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18490 .....	Hart County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18500 .....	Henderson County, Kentucky .....	2440	0.8713	0.8713	21780	50219	0.8713

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
18510 .....	Henry County, Kentucky .....	18	0.7858	0.9251	31140	50058	0.8555
18511 .....	Hickman County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18530 .....	Hopkins County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18540 .....	Jackson County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18550 .....	Jefferson County, Kentucky .....	4520	0.9293	0.9251	31140	50269	0.9272
18560 .....	Jessamine County, Kentucky .....	4280	0.8988	0.9075	30460	50460	0.9032
18570 .....	Johnson County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18580 .....	Kenton County, Kentucky .....	1640	0.9734	0.9615	17140	50197	0.9675
18590 .....	Knott County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18600 .....	Knox County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18610 .....	Larue County, Kentucky .....	18	0.7858	0.8802	21060	21060	0.8330
18620 .....	Laurel County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18630 .....	Lawrence County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18640 .....	Lee County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18650 .....	Leslie County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18660 .....	Letcher County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18670 .....	Lewis County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18680 .....	Lincoln County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18690 .....	Livingston County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18700 .....	Logan County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18710 .....	Lyon County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18720 .....	Mc Cracken County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18730 .....	Mc Creary County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18740 .....	Mc Lean County, Kentucky .....	18	0.7858	0.8780	36980	50059	0.8319
18750 .....	Madison County, Kentucky .....	4280	0.8988	0.7766	99918	50262	0.8377
18760 .....	Magoffin County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18770 .....	Marion County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18780 .....	Marshall County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18790 .....	Martin County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18800 .....	Mason County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18801 .....	Meade County, Kentucky .....	18	0.7858	0.9251	31140	50058	0.8555
18802 .....	Menifee County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18830 .....	Mercer County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18831 .....	Metcalfe County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18850 .....	Monroe County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18860 .....	Montgomery County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18861 .....	Morgan County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18880 .....	Muhlenberg County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18890 .....	Nelson County, Kentucky .....	18	0.7858	0.9251	31140	50058	0.8555
18900 .....	Nicholas County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18910 .....	Ohio County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18920 .....	Oldham County, Kentucky .....	4520	0.9293	0.9251	31140	50269	0.9272
18930 .....	Owen County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18931 .....	Owsley County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18932 .....	Pendleton County, Kentucky .....	1640	0.9734	0.9615	17140	50197	0.9675
18960 .....	Perry County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18970 .....	Pike County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18971 .....	Powell County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18972 .....	Pulaski County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18973 .....	Robertson County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18974 .....	Rockcastle County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18975 .....	Rowan County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18976 .....	Russell County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18977 .....	Scott County, Kentucky .....	4280	0.8988	0.9075	30460	30460	0.9032
18978 .....	Shelby County, Kentucky .....	18	0.7858	0.9251	31140	50058	0.8555
18979 .....	Simpson County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18980 .....	Spencer County, Kentucky .....	18	0.7858	0.9251	31140	50058	0.8555
18981 .....	Taylor County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18982 .....	Todd County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18983 .....	Trigg County, Kentucky .....	18	0.7858	0.8284	17300	50056	0.8071
18984 .....	Trimble County, Kentucky .....	18	0.7858	0.9251	31140	50058	0.8555
18985 .....	Union County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18986 .....	Warren County, Kentucky .....	18	0.7858	0.8211	14540	14540	0.8035
18987 .....	Washington County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18988 .....	Wayne County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18989 .....	Webster County, Kentucky .....	18	0.7858	0.8713	21780	50057	0.8286

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
18990 .....	Whitley County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18991 .....	Wolfe County, Kentucky .....	18	0.7858	0.7766	99918	50054	0.7812
18992 .....	Woodford County, Kentucky .....	4280	0.8988	0.9075	30460	30460	0.9032
19000 .....	Acadia County, Louisiana .....	3880	0.8251	0.7411	99919	50256	0.7831
19010 .....	Allen County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19020 .....	Ascension County, Louisiana .....	0760	0.8643	0.8593	12940	50177	0.8618
19030 .....	Assumption County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19040 .....	Avoyelles County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19050 .....	Beauregard County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19060 .....	Bienville County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19070 .....	Bossier County, Louisiana .....	7680	0.8737	0.8760	43340	50330	0.8749
19080 .....	Caddo County, Louisiana .....	7680	0.8737	0.8760	43340	50330	0.8749
19090 .....	Calcasieu County, Louisiana .....	3960	0.7858	0.7833	29340	50259	0.7846
19100 .....	Caldwell County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19110 .....	Cameron County, Louisiana .....	19	0.7340	0.7833	29340	50063	0.7587
19120 .....	Catahoula County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19130 .....	Claiborne County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19140 .....	Concordia County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19150 .....	De Soto County, Louisiana .....	19	0.7340	0.8760	43340	50065	0.8050
19160 .....	East Baton Rouge County, Louisiana .....	0760	0.8643	0.8593	12940	50177	0.8618
19170 .....	East Carroll County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19180 .....	East Feliciana County, Louisiana .....	19	0.7340	0.8593	12940	50062	0.7967
19190 .....	Evangeline County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19200 .....	Franklin County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19210 .....	Grant County, Louisiana .....	19	0.7340	0.8033	10780	50061	0.7687
19220 .....	Iberia County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19230 .....	Iberville County, Louisiana .....	19	0.7340	0.8593	12940	50062	0.7967
19240 .....	Jackson County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19250 .....	Jefferson County, Louisiana .....	5560	0.8995	0.8995	35380	35380	0.8995
19260 .....	Jefferson Davis County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19270 .....	Lafayette County, Louisiana .....	3880	0.8251	0.8428	29180	29180	0.8340
19280 .....	Lafourche County, Louisiana .....	3350	0.7894	0.7894	26380	26380	0.7894
19290 .....	La Salle County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19300 .....	Lincoln County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19310 .....	Livingston County, Louisiana .....	0760	0.8643	0.8593	12940	50177	0.8618
19320 .....	Madison County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19330 .....	Morehouse County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19340 .....	Natchitoches County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19350 .....	Orleans County, Louisiana .....	5560	0.8995	0.8995	35380	35380	0.8995
19360 .....	Ouachita County, Louisiana .....	5200	0.8044	0.8031	33740	50283	0.8038
19370 .....	Plaquemines County, Louisiana .....	5560	0.8995	0.8995	35380	35380	0.8995
19380 .....	Pointe Coupee County, Louisiana .....	19	0.7340	0.8593	12940	50062	0.7967
19390 .....	Rapides County, Louisiana .....	0220	0.8033	0.8033	10780	50166	0.8033
19400 .....	Red River County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19410 .....	Richland County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19420 .....	Sabine County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19430 .....	St Bernard County, Louisiana .....	5560	0.8995	0.8995	35380	35380	0.8995
19440 .....	St Charles County, Louisiana .....	5560	0.8995	0.8995	35380	35380	0.8995
19450 .....	St Helena County, Louisiana .....	19	0.7340	0.8593	12940	50062	0.7967
19460 .....	St James County, Louisiana .....	5560	0.8995	0.7411	99919	50286	0.8203
19470 .....	St John Baptist County, Louisiana .....	5560	0.8995	0.8995	35380	35380	0.8995
19480 .....	St Landry County, Louisiana .....	3880	0.8251	0.7411	99919	50256	0.7831
19490 .....	St Martin County, Louisiana .....	3880	0.8251	0.8428	29180	29180	0.8340
19500 .....	St Mary County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19510 .....	St Tammany County, Louisiana .....	5560	0.8995	0.8995	35380	35380	0.8995
19520 .....	Tangipahoa County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19530 .....	Tensas County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19540 .....	Terrebonne County, Louisiana .....	3350	0.7894	0.7894	26380	26380	0.7894
19550 .....	Union County, Louisiana .....	19	0.7340	0.8031	33740	50064	0.7686
19560 .....	Vermilion County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19570 .....	Vernon County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19580 .....	Washington County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19590 .....	Webster County, Louisiana .....	7680	0.8737	0.7411	99919	50329	0.8074
19600 .....	West Baton Rouge County, Louisiana .....	0760	0.8643	0.8593	12940	50177	0.8618
19610 .....	West Carroll County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
19620 .....	West Feliciana County, Louisiana .....	19	0.7340	0.8593	12940	50062	0.7967

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
19630 .....	Winn County, Louisiana .....	19	0.7340	0.7411	99919	50060	0.7376
20000 .....	Androscoggin County, Maine .....	4243	0.9331	0.9331	30340	30340	0.9331
20010 .....	Aroostook County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20020 .....	Cumberland County, Maine .....	6403	1.0382	1.0382	38860	38860	1.0382
20030 .....	Franklin County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20040 .....	Hancock County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20050 .....	Kennebec County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20060 .....	Knox County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20070 .....	Lincoln County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20080 .....	Oxford County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20090 .....	Penobscot County, Maine .....	0733	0.9993	0.9993	12620	12620	0.9993
20100 .....	Piscataquis County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20110 .....	Sagadahoc County, Maine .....	6403	1.0382	1.0382	38860	38860	1.0382
20120 .....	Somerset County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20130 .....	Waldo County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20140 .....	Washington County, Maine .....	20	0.8843	0.8843	99920	99920	0.8843
20150 .....	York County, Maine .....	6403	1.0382	1.0382	38860	38860	1.0382
21000 .....	Allegany County, Maryland .....	1900	0.9317	0.9317	19060	19060	0.9317
21010 .....	Anne Arundel County, Maryland .....	0720	0.9897	0.9897	12580	12580	0.9897
21020 .....	Baltimore County, Maryland .....	0720	0.9897	0.9897	12580	12580	0.9897
21030 .....	Baltimore City County, Maryland .....	0720	0.9897	0.9897	12580	12580	0.9897
21040 .....	Calvert County, Maryland .....	8840	1.0976	1.0926	47894	47894	1.0951
21050 .....	Caroline County, Maryland .....	21	0.9230	0.9353	99921	99921	0.9292
21060 .....	Carroll County, Maryland .....	0720	0.9897	0.9897	12580	12580	0.9897
21070 .....	Cecil County, Maryland .....	9160	1.0527	1.0471	48864	50349	1.0499
21080 .....	Charles County, Maryland .....	8840	1.0976	1.0926	47894	47894	1.0951
21090 .....	Dorchester County, Maryland .....	21	0.9230	0.9353	99921	99921	0.9292
21100 .....	Frederick County, Maryland .....	8840	1.0976	1.1483	13644	13644	1.1230
21110 .....	Garrett County, Maryland .....	21	0.9230	0.9353	99921	99921	0.9292
21120 .....	Harford County, Maryland .....	0720	0.9897	0.9897	12580	12580	0.9897
21130 .....	Howard County, Maryland .....	0720	0.9897	0.9897	12580	12580	0.9897
21140 .....	Kent County, Maryland .....	21	0.9230	0.9353	99921	99921	0.9292
21150 .....	Montgomery County, Maryland .....	8840	1.0976	1.1483	13644	13644	1.1230
21160 .....	Prince Georges County, Maryland .....	8840	1.0976	1.0926	47894	47894	1.0951
21170 .....	Queen Annes County, Maryland .....	0720	0.9897	0.9897	12580	12580	0.9897
21180 .....	St Marys County, Maryland .....	21	0.9230	0.9353	99921	99921	0.9292
21190 .....	Somerset County, Maryland .....	21	0.9230	0.9064	41540	41540	0.9147
21200 .....	Talbot County, Maryland .....	21	0.9230	0.9353	99921	99921	0.9292
21210 .....	Washington County, Maryland .....	3180	0.9869	0.9489	25180	50239	0.9679
21220 .....	Wicomico County, Maryland .....	21	0.9230	0.9064	41540	41540	0.9147
21230 .....	Worcester County, Maryland .....	21	0.9230	0.9353	99921	99921	0.9292
22000 .....	Barnstable County, Massachusetts .....	0743	1.2600	1.2600	12700	12700	1.2600
22010 .....	Berkshire County, Massachusetts .....	6323	1.0181	1.0181	38340	38340	1.0181
22020 .....	Bristol County, Massachusetts .....	1123	1.1178	1.0966	39300	50185	1.1072
22030 .....	Dukes County, Massachusetts .....	22	1.0216	1.0216	99922	99922	1.0216
22040 .....	Essex County, Massachusetts .....	1123	1.1178	1.0538	21604	21604	1.0858
22060 .....	Franklin County, Massachusetts .....	22	1.0216	1.0248	44140	50066	1.0232
22070 .....	Hampden County, Massachusetts .....	8003	1.0263	1.0248	44140	50335	1.0256
22080 .....	Hampshire County, Massachusetts .....	8003	1.0263	1.0248	44140	50335	1.0256
22090 .....	Middlesex County, Massachusetts .....	1123	1.1178	1.1172	15764	15764	1.1175
22120 .....	Nantucket County, Massachusetts .....	22	1.0216	1.0216	99922	99922	1.0216
22130 .....	Norfolk County, Massachusetts .....	1123	1.1178	1.1558	14484	14484	1.1368
22150 .....	Plymouth County, Massachusetts .....	1123	1.1178	1.1558	14484	14484	1.1368
22160 .....	Suffolk County, Massachusetts .....	1123	1.1178	1.1558	14484	14484	1.1368
22170 .....	Worcester County, Massachusetts .....	1123	1.1178	1.1028	49340	49340	1.1103
23000 .....	Alcona County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23010 .....	Alger County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23020 .....	Allegan County, Michigan .....	3000	0.9445	0.8895	99923	50231	0.9170
23030 .....	Alpena County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23040 .....	Antrim County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23050 .....	Arenac County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23060 .....	Baraga County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23070 .....	Barry County, Michigan .....	23	0.8824	0.9390	24340	50068	0.9107
23080 .....	Bay County, Michigan .....	6960	0.9241	0.9343	13020	13020	0.9292
23090 .....	Benzie County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23100 .....	Berrien County, Michigan .....	0870	0.8879	0.8879	35660	35660	0.8879

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
23110 .....	Branch County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23120 .....	Calhoun County, Michigan .....	3720	1.0143	0.9508	12980	12980	0.9826
23130 .....	Cass County, Michigan .....	23	0.8824	0.9788	43780	50069	0.9306
23140 .....	Charlevoix County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23150 .....	Cheboygan County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23160 .....	Chippewa County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23170 .....	Clare County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23180 .....	Clinton County, Michigan .....	4040	0.9794	0.9794	29620	29620	0.9794
23190 .....	Crawford County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23200 .....	Delta County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23210 .....	Dickinson County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23220 .....	Eaton County, Michigan .....	4040	0.9794	0.9794	29620	29620	0.9794
23230 .....	Emmet County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23240 .....	Genesee County, Michigan .....	2640	1.0655	1.0655	22420	22420	1.0655
23250 .....	Gladwin County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23260 .....	Gogebic County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23270 .....	Grand Traverse County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23280 .....	Gratiot County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23290 .....	Hillsdale County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23300 .....	Houghton County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23310 .....	Huron County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23320 .....	Ingham County, Michigan .....	4040	0.9794	0.9794	29620	29620	0.9794
23330 .....	Ionia County, Michigan .....	23	0.8824	0.9390	24340	50068	0.9107
23340 .....	Iosco County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23350 .....	Iron County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23360 .....	Isabella County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23370 .....	Jackson County, Michigan .....	3520	0.9304	0.9304	27100	27100	0.9304
23380 .....	Kalamazoo County, Michigan .....	3720	1.0143	1.0381	28020	28020	1.0262
23390 .....	Kalkaska County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23400 .....	Kent County, Michigan .....	3000	0.9445	0.9390	24340	50232	0.9418
23410 .....	Keweenaw County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23420 .....	Lake County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23430 .....	Lapeer County, Michigan .....	2160	1.0147	0.9871	47644	50213	1.0009
23440 .....	Leelanau County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23450 .....	Lenawee County, Michigan .....	0440	1.0707	0.8895	99923	50170	0.9801
23460 .....	Livingston County, Michigan .....	0440	1.0707	0.9871	47644	50171	1.0289
23470 .....	Luce County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23480 .....	Mackinac County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23490 .....	Macomb County, Michigan .....	2160	1.0147	0.9871	47644	50213	1.0009
23500 .....	Manistee County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23510 .....	Marquette County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23520 .....	Mason County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23530 .....	Mecosta County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23540 .....	Menominee County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23550 .....	Midland County, Michigan .....	6960	0.9241	0.8895	99923	50316	0.9068
23560 .....	Missaukee County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23570 .....	Monroe County, Michigan .....	2160	1.0147	0.9468	33780	33780	0.9808
23580 .....	Montcalm County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23590 .....	Montmorency County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23600 .....	Muskegon County, Michigan .....	3000	0.9445	0.9664	34740	34740	0.9555
23610 .....	Newaygo County, Michigan .....	23	0.8824	0.9390	24340	50068	0.9107
23620 .....	Oakland County, Michigan .....	2160	1.0147	0.9871	47644	50213	1.0009
23630 .....	Oceana County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23640 .....	Ogemaw County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23650 .....	Ontonagon County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23660 .....	Osceola County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23670 .....	Oscoda County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23680 .....	Otsego County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23690 .....	Ottawa County, Michigan .....	3000	0.9445	0.9055	26100	26100	0.9250
23700 .....	Presque Isle County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23710 .....	Roscommon County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23720 .....	Saginaw County, Michigan .....	6960	0.9241	0.9088	40980	40980	0.9165
23730 .....	St Clair County, Michigan .....	2160	1.0147	0.9871	47644	50213	1.0009
23740 .....	St Joseph County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23750 .....	Sanilac County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23760 .....	Schoolcraft County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
23770 .....	Shiawassee County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23780 .....	Tuscola County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
23790 .....	Van Buren County, Michigan .....	3720	1.0143	1.0381	28020	28020	1.0262
23800 .....	Washtenaw County, Michigan .....	0440	1.0707	1.0859	11460	11460	1.0783
23810 .....	Wayne County, Michigan .....	2160	1.0147	1.0424	19804	19804	1.0286
23830 .....	Wexford County, Michigan .....	23	0.8824	0.8895	99923	50067	0.8860
24000 .....	Aitkin County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24010 .....	Anoka County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24020 .....	Becker County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24030 .....	Beltrami County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24040 .....	Benton County, Minnesota .....	6980	0.9965	0.9965	41060	41060	0.9965
24050 .....	Big Stone County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24060 .....	Blue Earth County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24070 .....	Brown County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24080 .....	Carlton County, Minnesota .....	24	0.9132	1.0213	20260	50070	0.9673
24090 .....	Carver County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24100 .....	Cass County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24110 .....	Chippewa County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24120 .....	Chisago County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24130 .....	Clay County, Minnesota .....	2520	0.8486	0.8486	22020	22020	0.8486
24140 .....	Clearwater County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24150 .....	Cook County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24160 .....	Cottonwood County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24170 .....	Crow Wing County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24180 .....	Dakota County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24190 .....	Dodge County, Minnesota .....	24	0.9132	1.1131	40340	50071	1.0132
24200 .....	Douglas County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24210 .....	Faribault County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24220 .....	Fillmore County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24230 .....	Freeborn County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24240 .....	Goodhue County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24250 .....	Grant County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24260 .....	Hennepin County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24270 .....	Houston County, Minnesota .....	3870	0.9564	0.9564	29100	29100	0.9564
24280 .....	Hubbard County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24290 .....	Isanti County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24300 .....	Itasca County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24310 .....	Jackson County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24320 .....	Kanabec County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24330 .....	Kandiyohi County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24340 .....	Kittson County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24350 .....	Koochiching County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24360 .....	Lac Qui Parle County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24370 .....	Lake County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24380 .....	Lake Of Woods County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24390 .....	Le Sueur County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24400 .....	Lincoln County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24410 .....	Lyon County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24420 .....	Mc Leod County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24430 .....	Mahnomen County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24440 .....	Marshall County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24450 .....	Martin County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24460 .....	Meeker County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24470 .....	Mille Lacs County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24480 .....	Morrison County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24490 .....	Mower County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24500 .....	Murray County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24510 .....	Nicollet County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24520 .....	Nobles County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24530 .....	Norman County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24540 .....	Olmsted County, Minnesota .....	6820	1.1131	1.1131	40340	50312	1.1131
24550 .....	Otter Tail County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24560 .....	Pennington County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24570 .....	Pine County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24580 .....	Pipestone County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24590 .....	Polk County, Minnesota .....	2985	0.7901	0.7901	24220	24220	0.7901

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
24600 .....	Pope County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24610 .....	Ramsey County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24620 .....	Red Lake County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24630 .....	Redwood County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24640 .....	Renville County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24650 .....	Rice County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24660 .....	Rock County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24670 .....	Roseau County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24680 .....	St Louis County, Minnesota .....	2240	1.0213	1.0213	20260	50216	1.0213
24690 .....	Scott County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24700 .....	Sherburne County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24710 .....	Sibley County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24720 .....	Stearns County, Minnesota .....	6980	0.9965	0.9965	41060	41060	0.9965
24730 .....	Steele County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24740 .....	Stevens County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24750 .....	Swift County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24760 .....	Todd County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24770 .....	Traverse County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24780 .....	Wabasha County, Minnesota .....	24	0.9132	1.1131	40340	50071	1.0132
24790 .....	Wadena County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24800 .....	Waseca County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24810 .....	Washington County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24820 .....	Watonwan County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24830 .....	Wilkin County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24840 .....	Winona County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
24850 .....	Wright County, Minnesota .....	5120	1.1075	1.1075	33460	33460	1.1075
24860 .....	Yellow Medicine County, Minnesota .....	24	0.9132	0.9132	99924	99924	0.9132
25000 .....	Adams County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25010 .....	Alcorn County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25020 .....	Amite County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25030 .....	Attala County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25040 .....	Benton County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25050 .....	Bolivar County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25060 .....	Calhoun County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25070 .....	Carroll County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25080 .....	Chickasaw County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25090 .....	Choctaw County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25100 .....	Claiborne County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25110 .....	Clarke County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25120 .....	Clay County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25130 .....	Coahoma County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25140 .....	Copiah County, Mississippi .....	25	0.7634	0.8311	27140	50074	0.7973
25150 .....	Covington County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25160 .....	Desoto County, Mississippi .....	4920	0.9416	0.9397	32820	50278	0.9407
25170 .....	Forrest County, Mississippi .....	3285	0.7601	0.7601	25620	50241	0.7601
25180 .....	Franklin County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25190 .....	George County, Mississippi .....	25	0.7634	0.8156	37700	50076	0.7895
25200 .....	Greene County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25210 .....	Grenada County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25220 .....	Hancock County, Mississippi .....	0920	0.8706	0.8929	25060	50180	0.8818
25230 .....	Harrison County, Mississippi .....	0920	0.8706	0.8929	25060	50180	0.8818
25240 .....	Hinds County, Mississippi .....	3560	0.8382	0.8311	27140	50246	0.8347
25250 .....	Holmes County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25260 .....	Humphreys County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25270 .....	Issaquena County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25280 .....	Itawamba County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25290 .....	Jackson County, Mississippi .....	0920	0.8706	0.8156	37700	50181	0.8431
25300 .....	Jasper County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25310 .....	Jefferson County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25320 .....	Jefferson Davis County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25330 .....	Jones County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25340 .....	Kemper County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25350 .....	Lafayette County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25360 .....	Lamar County, Mississippi .....	3285	0.7601	0.7601	25620	50241	0.7601
25370 .....	Lauderdale County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25380 .....	Lawrence County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654



## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
25390 .....	Leake County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25400 .....	Lee County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25410 .....	Leflore County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25420 .....	Lincoln County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25430 .....	Lowndes County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25440 .....	Madison County, Mississippi .....	3560	0.8382	0.8311	27140	50246	0.8347
25450 .....	Marion County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25460 .....	Marshall County, Mississippi .....	25	0.7634	0.9397	32820	50075	0.8516
25470 .....	Monroe County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25480 .....	Montgomery County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25490 .....	Neshoba County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25500 .....	Newton County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25510 .....	Noxubee County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25520 .....	Oktibbeha County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25530 .....	Panola County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25540 .....	Pearl River County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25550 .....	Perry County, Mississippi .....	25	0.7634	0.7601	25620	50073	0.7618
25560 .....	Pike County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25570 .....	Pontotoc County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25580 .....	Prentiss County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25590 .....	Quitman County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25600 .....	Rankin County, Mississippi .....	3560	0.8382	0.8311	27140	50246	0.8347
25610 .....	Scott County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25620 .....	Sharkey County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25630 .....	Simpson County, Mississippi .....	25	0.7634	0.8311	27140	50074	0.7973
25640 .....	Smith County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25650 .....	Stone County, Mississippi .....	25	0.7634	0.8929	25060	50072	0.8282
25660 .....	Sunflower County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25670 .....	Tallahatchie County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25680 .....	Tate County, Mississippi .....	25	0.7634	0.9397	32820	50075	0.8516
25690 .....	Tippah County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25700 .....	Tishomingo County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25710 .....	Tunica County, Mississippi .....	25	0.7634	0.9397	32820	50075	0.8516
25720 .....	Union County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25730 .....	Walthall County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25740 .....	Warren County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25750 .....	Washington County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25760 .....	Wayne County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25770 .....	Webster County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25780 .....	Wilkinson County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25790 .....	Winston County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25800 .....	Yalobusha County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
25810 .....	Yazoo County, Mississippi .....	25	0.7634	0.7674	99925	99925	0.7654
26000 .....	Adair County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26010 .....	Andrew County, Missouri .....	7000	0.9519	0.9519	41140	50317	0.9519
26020 .....	Atchison County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26030 .....	Audrain County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26040 .....	Barry County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26050 .....	Barton County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26060 .....	Bates County, Missouri .....	26	0.7959	0.9476	28140	50079	0.8718
26070 .....	Benton County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26080 .....	Bollinger County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26090 .....	Boone County, Missouri .....	1740	0.8345	0.8345	17860	50201	0.8345
26100 .....	Buchanan County, Missouri .....	7000	0.9519	0.9519	41140	50317	0.9519
26110 .....	Butler County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26120 .....	Caldwell County, Missouri .....	26	0.7959	0.9476	28140	50079	0.8718
26130 .....	Callaway County, Missouri .....	26	0.7959	0.8387	27620	27620	0.8173
26140 .....	Camden County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26150 .....	Cape Girardeau County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26160 .....	Carroll County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26170 .....	Carter County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26180 .....	Cass County, Missouri .....	3760	0.9490	0.9476	28140	50252	0.9483
26190 .....	Cedar County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26200 .....	Chariton County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26210 .....	Christian County, Missouri .....	7920	0.8250	0.8237	44180	50334	0.8244
26220 .....	Clark County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
26230 .....	Clay County, Missouri .....	3760	0.9490	0.9476	28140	50252	0.9483
26240 .....	Clinton County, Missouri .....	3760	0.9490	0.9476	28140	50252	0.9483
26250 .....	Cole County, Missouri .....	26	0.7959	0.8387	27620	27620	0.8173
26260 .....	Cooper County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26270 .....	Crawford County, Missouri .....	26	0.7959	0.8954	41180	50081	0.8457
26280 .....	Dade County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26290 .....	Dallas County, Missouri .....	26	0.7959	0.8237	44180	50082	0.8098
26300 .....	Daviess County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26310 .....	De Kalb County, Missouri .....	26	0.7959	0.9519	41140	50080	0.8739
26320 .....	Dent County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26330 .....	Douglas County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26340 .....	Dunklin County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26350 .....	Franklin County, Missouri .....	7040	0.8962	0.8954	41180	50318	0.8958
26360 .....	Gasconade County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26370 .....	Gentry County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26380 .....	Greene County, Missouri .....	7920	0.8250	0.8237	44180	50334	0.8244
26390 .....	Grundy County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26400 .....	Harrison County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26410 .....	Henry County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26411 .....	Hickory County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26412 .....	Holt County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26440 .....	Howard County, Missouri .....	26	0.7959	0.8345	17860	50077	0.8152
26450 .....	Howell County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26460 .....	Iron County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26470 .....	Jackson County, Missouri .....	3760	0.9490	0.9476	28140	50252	0.9483
26480 .....	Jasper County, Missouri .....	3710	0.8582	0.8582	27900	27900	0.8582
26490 .....	Jefferson County, Missouri .....	7040	0.8962	0.8954	41180	50318	0.8958
26500 .....	Johnson County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26510 .....	Knox County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26520 .....	Laclede County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26530 .....	Lafayette County, Missouri .....	3760	0.9490	0.9476	28140	50252	0.9483
26540 .....	Lawrence County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26541 .....	Lewis County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26560 .....	Lincoln County, Missouri .....	7040	0.8962	0.8954	41180	50318	0.8958
26570 .....	Linn County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26580 .....	Livingston County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26590 .....	Mc Donald County, Missouri .....	26	0.7959	0.8661	22220	50078	0.8310
26600 .....	Macon County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26601 .....	Madison County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26620 .....	Maries County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26630 .....	Marion County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26631 .....	Mercer County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26650 .....	Miller County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26660 .....	Mississippi County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26670 .....	Moniteau County, Missouri .....	26	0.7959	0.8387	27620	27620	0.8173
26680 .....	Monroe County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26690 .....	Montgomery County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26700 .....	Morgan County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26710 .....	New Madrid County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26720 .....	Newton County, Missouri .....	3710	0.8582	0.8582	27900	27900	0.8582
26730 .....	Nodaway County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26740 .....	Oregon County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26750 .....	Osage County, Missouri .....	26	0.7959	0.8387	27620	27620	0.8173
26751 .....	Ozark County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26770 .....	Pemiscot County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26780 .....	Perry County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26790 .....	Pettis County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26800 .....	Phelps County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26810 .....	Pike County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26820 .....	Platte County, Missouri .....	3760	0.9490	0.9476	28140	50252	0.9483
26821 .....	Polk County, Missouri .....	26	0.7959	0.8237	44180	50082	0.8098
26840 .....	Pulaski County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26850 .....	Putnam County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26860 .....	Ralls County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26870 .....	Randolph County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26880 .....	Ray County, Missouri .....	3760	0.9490	0.9476	28140	50252	0.9483

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
26881 .....	Reynolds County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26900 .....	Ripley County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26910 .....	St Charles County, Missouri .....	7040	0.8962	0.8954	41180	50318	0.8958
26911 .....	St Clair County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26930 .....	St Francois County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26940 .....	St Louis County, Missouri .....	7040	0.8962	0.8954	41180	50318	0.8958
26950 .....	St Louis City County, Missouri .....	7040	0.8962	0.8954	41180	50318	0.8958
26960 .....	Ste Genevieve County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26970 .....	Saline County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26980 .....	Schuyler County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26981 .....	Scotland County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26982 .....	Scott County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26983 .....	Shannon County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26984 .....	Shelby County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26985 .....	Stoddard County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26986 .....	Stone County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26987 .....	Sullivan County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26988 .....	Taney County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26989 .....	Texas County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26990 .....	Vernon County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26991 .....	Warren County, Missouri .....	7040	0.8962	0.8954	41180	50318	0.8958
26992 .....	Washington County, Missouri .....	26	0.7959	0.8954	41180	50081	0.8457
26993 .....	Wayne County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26994 .....	Webster County, Missouri .....	7920	0.8250	0.8237	44180	50334	0.8244
26995 .....	Worth County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
26996 .....	Wright County, Missouri .....	26	0.7959	0.7900	99926	99926	0.7930
27000 .....	Beaverhead County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27010 .....	Big Horn County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27020 .....	Blaine County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27030 .....	Broadwater County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27040 .....	Carbon County, Montana .....	27	0.8762	0.8834	13740	50083	0.8798
27050 .....	Carter County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27060 .....	Cascade County, Montana .....	3040	0.9052	0.9052	24500	24500	0.9052
27070 .....	Chouteau County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27080 .....	Custer County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27090 .....	Daniels County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27100 .....	Dawson County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27110 .....	Deer Lodge County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27113 .....	Yellowstone National Park, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27120 .....	Fallon County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27130 .....	Fergus County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27140 .....	Flathead County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27150 .....	Gallatin County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27160 .....	Garfield County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27170 .....	Glacier County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27180 .....	Golden Valley County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27190 .....	Granite County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27200 .....	Hill County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27210 .....	Jefferson County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27220 .....	Judith Basin County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27230 .....	Lake County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27240 .....	Lewis And Clark County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27250 .....	Liberty County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27260 .....	Lincoln County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27270 .....	Mc Cone County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27280 .....	Madison County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27290 .....	Meagher County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27300 .....	Mineral County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27310 .....	Missoula County, Montana .....	5140	0.9473	0.9473	33540	33540	0.9473
27320 .....	Musselshell County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27330 .....	Park County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27340 .....	Petroleum County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27350 .....	Phillips County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27360 .....	Pondera County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27370 .....	Powder River County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27380 .....	Powell County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
27390 .....	Prairie County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27400 .....	Ravalli County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27410 .....	Richland County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27420 .....	Roosevelt County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27430 .....	Rosebud County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27440 .....	Sanders County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27450 .....	Sheridan County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27460 .....	Silver Bow County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27470 .....	Stillwater County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27480 .....	Sweet Grass County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27490 .....	Teton County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27500 .....	Toole County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27510 .....	Treasure County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27520 .....	Valley County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27530 .....	Wheatland County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27540 .....	Wibaux County, Montana .....	27	0.8762	0.8762	99927	99927	0.8762
27550 .....	Yellowstone County, Montana .....	0880	0.8834	0.8834	13740	50179	0.8834
28000 .....	Adams County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28010 .....	Antelope County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28020 .....	Arthur County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28030 .....	Banner County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28040 .....	Blaine County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28050 .....	Boone County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28060 .....	Box Butte County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28070 .....	Boyd County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28080 .....	Brown County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28090 .....	Buffalo County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28100 .....	Burt County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28110 .....	Butler County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28120 .....	Cass County, Nebraska .....	5920	0.9560	0.9560	36540	50295	0.9560
28130 .....	Cedar County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28140 .....	Chase County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28150 .....	Cherry County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28160 .....	Cheyenne County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28170 .....	Clay County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28180 .....	Colfax County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28190 .....	Cuming County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28200 .....	Custer County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28210 .....	Dakota County, Nebraska .....	7720	0.9416	0.9381	43580	50331	0.9399
28220 .....	Dawes County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28230 .....	Dawson County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28240 .....	Deuel County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28250 .....	Dixon County, Nebraska .....	28	0.8657	0.9381	43580	50086	0.9019
28260 .....	Dodge County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28270 .....	Douglas County, Nebraska .....	5920	0.9560	0.9560	36540	50295	0.9560
28280 .....	Dundy County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28290 .....	Fillmore County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28300 .....	Franklin County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28310 .....	Frontier County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28320 .....	Furnas County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28330 .....	Gage County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28340 .....	Garden County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28350 .....	Garfield County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28360 .....	Gosper County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28370 .....	Grant County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28380 .....	Greeley County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28390 .....	Hall County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28400 .....	Hamilton County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28410 .....	Harlan County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28420 .....	Hayes County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28430 .....	Hitchcock County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28440 .....	Holt County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28450 .....	Hooker County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28460 .....	Howard County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28470 .....	Jefferson County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28480 .....	Johnson County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
28490 .....	Kearney County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28500 .....	Keith County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28510 .....	Keya Paha County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28520 .....	Kimball County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28530 .....	Knox County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28540 .....	Lancaster County, Nebraska .....	4360	1.0214	1.0214	30700	50264	1.0214
28550 .....	Lincoln County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28560 .....	Logan County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28570 .....	Loup County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28580 .....	Mc Pherson County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28590 .....	Madison County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28600 .....	Merrick County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28610 .....	Morrill County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28620 .....	Nance County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28630 .....	Nemaha County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28640 .....	Nuckolls County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28650 .....	Otoe County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28660 .....	Pawnee County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28670 .....	Perkins County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28680 .....	Phelps County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28690 .....	Pierce County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28700 .....	Platte County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28710 .....	Polk County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28720 .....	Redwillow County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28730 .....	Richardson County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28740 .....	Rock County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28750 .....	Saline County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28760 .....	Sarpy County, Nebraska .....	5920	0.9560	0.9560	36540	50295	0.9560
28770 .....	Saunders County, Nebraska .....	28	0.8657	0.9560	36540	50085	0.9109
28780 .....	Scotts Bluff County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28790 .....	Seward County, Nebraska .....	28	0.8657	1.0214	30700	50084	0.9436
28800 .....	Sheridan County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28810 .....	Sherman County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28820 .....	Sioux County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28830 .....	Stanton County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28840 .....	Thayer County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28850 .....	Thomas County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28860 .....	Thurston County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28870 .....	Valley County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28880 .....	Washington County, Nebraska .....	5920	0.9560	0.9560	36540	50295	0.9560
28890 .....	Wayne County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28900 .....	Webster County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28910 .....	Wheeler County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
28920 .....	York County, Nebraska .....	28	0.8657	0.8657	99928	99928	0.8657
29000 .....	Churchill County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29010 .....	Clark County, Nevada .....	4120	1.1155	1.1437	29820	29820	1.1296
29020 .....	Douglas County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29030 .....	Elko County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29040 .....	Esmeralda County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29050 .....	Eureka County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29060 .....	Humboldt County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29070 .....	Lander County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29080 .....	Lincoln County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29090 .....	Lyon County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29100 .....	Mineral County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29110 .....	Nye County, Nevada .....	4120	1.1155	0.9065	99929	50261	1.0110
29120 .....	Carson City County, Nevada .....	29	0.9687	1.0234	16180	16180	0.9961
29130 .....	Pershing County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
29140 .....	Storey County, Nevada .....	29	0.9687	1.0982	39900	50088	1.0335
29150 .....	Washoe County, Nevada .....	6720	1.0982	1.0982	39900	50309	1.0982
29160 .....	White Pine County, Nevada .....	29	0.9687	0.9065	99929	50087	0.9376
30000 .....	Belknap County, New Hampshire .....	30	1.0817	1.0817	99930	99930	1.0817
30010 .....	Carroll County, New Hampshire .....	30	1.0817	1.0817	99930	99930	1.0817
30020 .....	Cheshire County, New Hampshire .....	30	1.0817	1.0817	99930	99930	1.0817
30030 .....	Coos County, New Hampshire .....	30	1.0817	1.0817	99930	99930	1.0817
30040 .....	Grafton County, New Hampshire .....	30	1.0817	1.0817	99930	99930	1.0817

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
30050 .....	Hillsboro County, New Hampshire .....	1123	1.1178	1.0354	31700	31700	1.0766
30060 .....	Merrimack County, New Hampshire .....	1123	1.1178	1.0354	31700	31700	1.0766
30070 .....	Rockingham County, New Hampshire .....	1123	1.1178	1.0374	40484	40484	1.0776
30080 .....	Strafford County, New Hampshire .....	1123	1.1178	1.0374	40484	40484	1.0776
30090 .....	Sullivan County, New Hampshire .....	30	1.0817	1.0817	99930	99930	1.0817
31000 .....	Atlantic County, New Jersey .....	0560	1.1496	1.1615	12100	12100	1.1556
31100 .....	Bergen County, New Jersey .....	0875	1.1651	1.3188	35644	50178	1.2420
31150 .....	Burlington County, New Jersey .....	6160	1.0922	1.0517	15804	15804	1.0720
31160 .....	Camden County, New Jersey .....	6160	1.0922	1.0517	15804	15804	1.0720
31180 .....	Cape May County, New Jersey .....	0560	1.1496	1.1011	36140	36140	1.1254
31190 .....	Cumberland County, New Jersey .....	8760	0.9827	0.9827	47220	47220	0.9827
31200 .....	Essex County, New Jersey .....	5640	1.1834	1.1883	35084	50289	1.1859
31220 .....	Gloucester County, New Jersey .....	6160	1.0922	1.0517	15804	15804	1.0720
31230 .....	Hudson County, New Jersey .....	3640	1.1338	1.3188	35644	50249	1.2263
31250 .....	Hunterdon County, New Jersey .....	5015	1.1167	1.1883	35084	50280	1.1525
31260 .....	Mercer County, New Jersey .....	8480	1.0834	1.0834	45940	45940	1.0834
31270 .....	Middlesex County, New Jersey .....	5015	1.1167	1.1249	20764	50279	1.1208
31290 .....	Monmouth County, New Jersey .....	5190	1.1260	1.1249	20764	50282	1.1255
31300 .....	Morris County, New Jersey .....	5640	1.1834	1.1883	35084	50289	1.1859
31310 .....	Ocean County, New Jersey .....	5190	1.1260	1.1249	20764	50282	1.1255
31320 .....	Passaic County, New Jersey .....	0875	1.1651	1.3188	35644	50178	1.2420
31340 .....	Salem County, New Jersey .....	6160	1.0922	1.0471	48864	50299	1.0697
31350 .....	Somerset County, New Jersey .....	5015	1.1167	1.1249	20764	50279	1.1208
31360 .....	Sussex County, New Jersey .....	5640	1.1834	1.1883	35084	50289	1.1859
31370 .....	Union County, New Jersey .....	5640	1.1834	1.1883	35084	50289	1.1859
31390 .....	Warren County, New Jersey .....	5640	1.1834	0.9818	10900	50288	1.0826
32000 .....	Bernalillo County, New Mexico .....	0200	0.9684	0.9684	10740	50165	0.9684
32010 .....	Catron County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32020 .....	Chaves County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32025 .....	Cibola County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32030 .....	Colfax County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32040 .....	Curry County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32050 .....	De Baca County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32060 .....	Dona Ana County, New Mexico .....	4100	0.8467	0.8467	29740	29740	0.8467
32070 .....	Eddy County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32080 .....	Grant County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32090 .....	Guadalupe County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32100 .....	Harding County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32110 .....	Hidalgo County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32120 .....	Lea County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32130 .....	Lincoln County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32131 .....	Los Alamos County, New Mexico .....	7490	1.0748	0.8635	99932	50325	0.9692
32140 .....	Luna County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32150 .....	Mc Kinley County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32160 .....	Mora County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32170 .....	Otero County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32180 .....	Quay County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32190 .....	Rio Arriba County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32200 .....	Roosevelt County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32210 .....	Sandoval County, New Mexico .....	0200	0.9684	0.9684	10740	50165	0.9684
32220 .....	San Juan County, New Mexico .....	32	0.8563	0.8509	22140	22140	0.8536
32230 .....	San Miguel County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32240 .....	Santa Fe County, New Mexico .....	7490	1.0748	1.0920	42140	42140	1.0834
32250 .....	Sierra County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32260 .....	Socorro County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32270 .....	Taos County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32280 .....	Torrance County, New Mexico .....	32	0.8563	0.9684	10740	50090	0.9124
32290 .....	Union County, New Mexico .....	32	0.8563	0.8635	99932	50089	0.8599
32300 .....	Valencia County, New Mexico .....	0200	0.9684	0.9684	10740	50165	0.9684
33000 .....	Albany County, New York .....	0160	0.8559	0.8589	10580	10580	0.8574
33010 .....	Allegany County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33020 .....	Bronx County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33030 .....	Broome County, New York .....	0960	0.8562	0.8562	13780	13780	0.8562
33040 .....	Cattaraugus County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33050 .....	Cayuga County, New York .....	8160	0.9492	0.8154	99933	50336	0.8823
33060 .....	Chautauqua County, New York .....	3610	0.7544	0.8154	99933	50248	0.7849

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
33070 .....	Chemung County, New York .....	2335	0.8250	0.8250	21300	21300	0.8250
33080 .....	Chenango County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33090 .....	Clinton County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33200 .....	Columbia County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33210 .....	Cortland County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33220 .....	Delaware County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33230 .....	Dutchess County, New York .....	2281	1.0475	1.0891	39100	50217	1.0683
33240 .....	Erie County, New York .....	1280	0.9511	0.9511	15380	15380	0.9511
33260 .....	Essex County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33270 .....	Franklin County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33280 .....	Fulton County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33290 .....	Genesee County, New York .....	6840	0.9049	0.8154	99933	50313	0.8602
33300 .....	Greene County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33310 .....	Hamilton County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33320 .....	Herkimer County, New York .....	8680	0.8358	0.8358	46540	46540	0.8358
33330 .....	Jefferson County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33331 .....	Kings County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33340 .....	Lewis County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33350 .....	Livingston County, New York .....	6840	0.9049	0.9121	40380	40380	0.9085
33360 .....	Madison County, New York .....	8160	0.9492	0.9574	45060	45060	0.9533
33370 .....	Monroe County, New York .....	6840	0.9049	0.9121	40380	40380	0.9085
33380 .....	Montgomery County, New York .....	0160	0.8559	0.8154	99933	50164	0.8357
33400 .....	Nassau County, New York .....	5380	1.2719	1.2719	35004	35004	1.2719
33420 .....	New York County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33500 .....	Niagara County, New York .....	1280	0.9511	0.9511	15380	15380	0.9511
33510 .....	Oneida County, New York .....	8680	0.8358	0.8358	46540	46540	0.8358
33520 .....	Onondaga County, New York .....	8160	0.9492	0.9574	45060	45060	0.9533
33530 .....	Ontario County, New York .....	6840	0.9049	0.9121	40380	40380	0.9085
33540 .....	Orange County, New York .....	5660	1.1207	1.0891	39100	50291	1.1049
33550 .....	Orleans County, New York .....	6840	0.9049	0.9121	40380	40380	0.9085
33560 .....	Oswego County, New York .....	8160	0.9492	0.9574	45060	45060	0.9533
33570 .....	Otsego County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33580 .....	Putnam County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33590 .....	Queens County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33600 .....	Rensselaer County, New York .....	0160	0.8559	0.8589	10580	10580	0.8574
33610 .....	Richmond County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33620 .....	Rockland County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33630 .....	St Lawrence County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33640 .....	Saratoga County, New York .....	0160	0.8559	0.8589	10580	10580	0.8574
33650 .....	Schenectady County, New York .....	0160	0.8559	0.8589	10580	10580	0.8574
33660 .....	Schoharie County, New York .....	0160	0.8559	0.8589	10580	10580	0.8574
33670 .....	Schuyler County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33680 .....	Seneca County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33690 .....	Steuben County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33700 .....	Suffolk County, New York .....	5380	1.2719	1.2719	35004	35004	1.2719
33710 .....	Sullivan County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33720 .....	Tioga County, New York .....	0960	0.8562	0.8562	13780	13780	0.8562
33730 .....	Tompkins County, New York .....	33	0.8395	0.9793	27060	27060	0.9094
33740 .....	Ulster County, New York .....	33	0.8395	0.9255	28740	28740	0.8825
33750 .....	Warren County, New York .....	2975	0.8559	0.8559	24020	24020	0.8559
33760 .....	Washington County, New York .....	2975	0.8559	0.8559	24020	24020	0.8559
33770 .....	Wayne County, New York .....	6840	0.9049	0.9121	40380	40380	0.9085
33800 .....	Westchester County, New York .....	5600	1.3464	1.3188	35644	50287	1.3326
33900 .....	Wyoming County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
33910 .....	Yates County, New York .....	33	0.8395	0.8154	99933	50091	0.8275
34000 .....	Alamance County, N Carolina .....	3120	0.9018	0.8905	15500	15500	0.8962
34010 .....	Alexander County, N Carolina .....	3290	0.8921	0.8921	25860	25860	0.8921
34020 .....	Alleghany County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34030 .....	Anson County, N Carolina .....	34	0.8462	0.9750	16740	50094	0.9106
34040 .....	Ashe County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34050 .....	Avery County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34060 .....	Beaufort County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34070 .....	Bertie County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34080 .....	Bladen County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34090 .....	Brunswick County, N Carolina .....	9200	0.9582	0.9582	48900	50350	0.9582
34100 .....	Buncombe County, N Carolina .....	0480	0.9737	0.9285	11700	50173	0.9511

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
34110 .....	Burke County, N Carolina .....	3290	0.8921	0.8921	25860	25860	0.8921
34120 .....	Cabarrus County, N Carolina .....	1520	0.9715	0.9750	16740	50193	0.9733
34130 .....	Caldwell County, N Carolina .....	3290	0.8921	0.8921	25860	25860	0.8921
34140 .....	Camden County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34150 .....	Carteret County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34160 .....	Caswell County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34170 .....	Catawba County, N Carolina .....	3290	0.8921	0.8921	25860	25860	0.8921
34180 .....	Chatham County, N Carolina .....	6640	1.0034	1.0244	20500	50307	1.0139
34190 .....	Cherokee County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34200 .....	Chowan County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34210 .....	Clay County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34220 .....	Cleveland County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34230 .....	Columbus County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34240 .....	Craven County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34250 .....	Cumberland County, N Carolina .....	2560	0.9416	0.9416	22180	50220	0.9416
34251 .....	Currituck County, N Carolina .....	5720	0.8799	0.8799	47260	50292	0.8799
34270 .....	Dare County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34280 .....	Davidson County, N Carolina .....	3120	0.9018	0.8540	99934	50234	0.8779
34290 .....	Davie County, N Carolina .....	3120	0.9018	0.8944	49180	49180	0.8981
34300 .....	Duplin County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34310 .....	Durham County, N Carolina .....	6640	1.0034	1.0244	20500	50307	1.0139
34320 .....	Edgecombe County, N Carolina .....	6895	0.8915	0.8915	40580	40580	0.8915
34330 .....	Forsyth County, N Carolina .....	3120	0.9018	0.8944	49180	49180	0.8981
34340 .....	Franklin County, N Carolina .....	6640	1.0034	0.9691	39580	39580	0.9863
34350 .....	Gaston County, N Carolina .....	1520	0.9715	0.9750	16740	50193	0.9733
34360 .....	Gates County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34370 .....	Graham County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34380 .....	Granville County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34390 .....	Greene County, N Carolina .....	34	0.8462	0.9425	24780	50098	0.8944
34400 .....	Guilford County, N Carolina .....	3120	0.9018	0.9104	24660	50235	0.9061
34410 .....	Halifax County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34420 .....	Harnett County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34430 .....	Haywood County, N Carolina .....	34	0.8462	0.9285	11700	50093	0.8874
34440 .....	Henderson County, N Carolina .....	34	0.8462	0.9285	11700	50093	0.8874
34450 .....	Hertford County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34460 .....	Hoke County, N Carolina .....	34	0.8462	0.9416	22180	50096	0.8939
34470 .....	Hyde County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34480 .....	Iredell County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34490 .....	Jackson County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34500 .....	Johnston County, N Carolina .....	6640	1.0034	0.9691	39580	39580	0.9863
34510 .....	Jones County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34520 .....	Lee County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34530 .....	Lenoir County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34540 .....	Lincoln County, N Carolina .....	1520	0.9715	0.8540	99934	50192	0.9128
34550 .....	Mc Dowell County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34560 .....	Macon County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34570 .....	Madison County, N Carolina .....	0480	0.9737	0.9285	11700	50173	0.9511
34580 .....	Martin County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34590 .....	Mecklenburg County, N Carolina .....	1520	0.9715	0.9750	16740	50193	0.9733
34600 .....	Mitchell County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34610 .....	Montgomery County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34620 .....	Moore County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34630 .....	Nash County, N Carolina .....	6895	0.8915	0.8915	40580	40580	0.8915
34640 .....	New Hanover County, N Carolina .....	9200	0.9582	0.9582	48900	50350	0.9582
34650 .....	Northampton County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34660 .....	Onslow County, N Carolina .....	3605	0.8236	0.8236	27340	27340	0.8236
34670 .....	Orange County, N Carolina .....	6640	1.0034	1.0244	20500	50307	1.0139
34680 .....	Pamlico County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34690 .....	Pasquotank County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34700 .....	Pender County, N Carolina .....	34	0.8462	0.9582	48900	50099	0.9022
34710 .....	Perquimans County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34720 .....	Person County, N Carolina .....	34	0.8462	1.0244	20500	50095	0.9353
34730 .....	Pitt County, N Carolina .....	3150	0.9425	0.9425	24780	50236	0.9425
34740 .....	Polk County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34750 .....	Randolph County, N Carolina .....	3120	0.9018	0.9104	24660	50235	0.9061
34760 .....	Richmond County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501



## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
34770 .....	Robeson County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34780 .....	Rockingham County, N Carolina .....	34	0.8462	0.9104	24660	50097	0.8783
34790 .....	Rowan County, N Carolina .....	1520	0.9715	0.8540	99934	50192	0.9128
34800 .....	Rutherford County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34810 .....	Sampson County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34820 .....	Scotland County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34830 .....	Stanly County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34840 .....	Stokes County, N Carolina .....	3120	0.9018	0.8944	49180	49180	0.8981
34850 .....	Surry County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34860 .....	Swain County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34870 .....	Transylvania County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34880 .....	Tyrrell County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34890 .....	Union County, N Carolina .....	1520	0.9715	0.9750	16740	50193	0.9733
34900 .....	Vance County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34910 .....	Wake County, N Carolina .....	6640	1.0034	0.9691	39580	39580	0.9863
34920 .....	Warren County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34930 .....	Washington County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34940 .....	Watauga County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34950 .....	Wayne County, N Carolina .....	2980	0.8775	0.8775	24140	24140	0.8775
34960 .....	Wilkes County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34970 .....	Wilson County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
34980 .....	Yadkin County, N Carolina .....	3120	0.9018	0.8944	49180	49180	0.8981
34981 .....	Yancey County, N Carolina .....	34	0.8462	0.8540	99934	50092	0.8501
35000 .....	Adams County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35010 .....	Barnes County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35020 .....	Benson County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35030 .....	Billings County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35040 .....	Bottineau County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35050 .....	Bowman County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35060 .....	Burke County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35070 .....	Burleigh County, N Dakota .....	1010	0.7574	0.7574	13900	13900	0.7574
35080 .....	Cass County, N Dakota .....	2520	0.8486	0.8486	22020	22020	0.8486
35090 .....	Cavalier County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35100 .....	Dickey County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35110 .....	Divide County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35120 .....	Dunn County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35130 .....	Eddy County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35140 .....	Emmons County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35150 .....	Foster County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35160 .....	Golden Valley County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35170 .....	Grand Forks County, N Dakota .....	2985	0.7901	0.7901	24220	24220	0.7901
35180 .....	Grant County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35190 .....	Griggs County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35200 .....	Hettinger County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35210 .....	Kidder County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35220 .....	La Moure County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35230 .....	Logan County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35240 .....	Mc Henry County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35250 .....	Mc Intosh County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35260 .....	Mc Kenzie County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35270 .....	Mc Lean County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35280 .....	Mercer County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35290 .....	Morton County, N Dakota .....	1010	0.7574	0.7574	13900	13900	0.7574
35300 .....	Mountrail County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35310 .....	Nelson County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35320 .....	Oliver County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35330 .....	Pembina County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35340 .....	Pierce County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35350 .....	Ramsey County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35360 .....	Ransom County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35370 .....	Renville County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35380 .....	Richland County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35390 .....	Rolette County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35400 .....	Sargent County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35410 .....	Sheridan County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35420 .....	Sioux County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
35430 .....	Slope County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35440 .....	Stark County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35450 .....	Steele County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35460 .....	Stutsman County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35470 .....	Towner County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35480 .....	Traill County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35490 .....	Walsh County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35500 .....	Ward County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35510 .....	Wells County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
35520 .....	Williams County, N Dakota .....	35	0.7261	0.7261	99935	99935	0.7261
36000 .....	Adams County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36010 .....	Allen County, Ohio .....	4320	0.9119	0.9225	30620	30620	0.9172
36020 .....	Ashland County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36030 .....	Ashtabula County, Ohio .....	1680	0.9183	0.8826	99936	50199	0.9005
36040 .....	Athens County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36050 .....	Auglaize County, Ohio .....	4320	0.9119	0.8826	99936	50263	0.8973
36060 .....	Belmont County, Ohio .....	9000	0.7161	0.7161	48540	48540	0.7161
36070 .....	Brown County, Ohio .....	1640	0.9734	0.9615	17140	50197	0.9675
36080 .....	Butler County, Ohio .....	3200	0.8951	0.9615	17140	50240	0.9283
36090 .....	Carroll County, Ohio .....	1320	0.8935	0.8935	15940	15940	0.8935
36100 .....	Champaign County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36110 .....	Clark County, Ohio .....	2000	0.8980	0.8396	44220	44220	0.8688
36120 .....	Clermont County, Ohio .....	1640	0.9734	0.9615	17140	50197	0.9675
36130 .....	Clinton County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36140 .....	Columbiana County, Ohio .....	9320	0.8848	0.8826	99936	50352	0.8837
36150 .....	Coshocton County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36160 .....	Crawford County, Ohio .....	4800	0.9891	0.8826	99936	50275	0.9359
36170 .....	Cuyahoga County, Ohio .....	1680	0.9183	0.9213	17460	17460	0.9198
36190 .....	Darke County, Ohio .....	36	0.891	0.8826	99936	50100	0.8874
36200 .....	Defiance County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36210 .....	Delaware County, Ohio .....	1840	0.9874	0.9860	18140	50204	0.9867
36220 .....	Erie County, Ohio .....	36	0.8921	0.9019	41780	41780	0.8970
36230 .....	Fairfield County, Ohio .....	1840	0.9874	0.9860	18140	50204	0.9867
36240 .....	Fayette County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36250 .....	Franklin County, Ohio .....	1840	0.9874	0.9860	18140	50204	0.9867
36260 .....	Fulton County, Ohio .....	8400	0.9574	0.9574	45780	50339	0.9574
36270 .....	Gallia County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36280 .....	Geauga County, Ohio .....	1680	0.9183	0.9213	17460	17460	0.9198
36290 .....	Greene County, Ohio .....	2000	0.8980	0.9064	19380	50209	0.9022
36300 .....	Guernsey County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36310 .....	Hamilton County, Ohio .....	1640	0.9734	0.9615	17140	50197	0.9675
36330 .....	Hancock County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36340 .....	Hardin County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36350 .....	Harrison County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36360 .....	Henry County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36370 .....	Highland County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36380 .....	Hocking County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36390 .....	Holmes County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36400 .....	Huron County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36410 .....	Jackson County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36420 .....	Jefferson County, Ohio .....	8080	0.7819	0.7819	48260	48260	0.7819
36430 .....	Knox County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36440 .....	Lake County, Ohio .....	1680	0.9183	0.9213	17460	17460	0.9198
36450 .....	Lawrence County, Ohio .....	3400	0.9477	0.9477	26580	26580	0.9477
36460 .....	Licking County, Ohio .....	1840	0.9874	0.9860	18140	50204	0.9867
36470 .....	Logan County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36480 .....	Lorain County, Ohio .....	1680	0.9183	0.9213	17460	17460	0.9198
36490 .....	Lucas County, Ohio .....	8400	0.9574	0.9574	45780	50339	0.9574
36500 .....	Madison County, Ohio .....	1840	0.9874	0.9860	18140	50204	0.9867
36510 .....	Mahoning County, Ohio .....	9320	0.8848	0.8603	49660	50353	0.8726
36520 .....	Marion County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36530 .....	Medina County, Ohio .....	1680	0.9183	0.9213	17460	17460	0.9198
36540 .....	Meigs County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36550 .....	Mercer County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36560 .....	Miami County, Ohio .....	2000	0.8980	0.9064	19380	50209	0.9022
36570 .....	Monroe County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
36580 .....	Montgomery County, Ohio .....	2000	0.8980	0.9064	19380	50209	0.9022
36590 .....	Morgan County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36600 .....	Morrow County, Ohio .....	36	0.8921	0.9860	18140	50101	0.9391
36610 .....	Muskingum County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36620 .....	Noble County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36630 .....	Ottawa County, Ohio .....	36	0.8921	0.9574	45780	50103	0.9248
36640 .....	Paulding County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36650 .....	Perry County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36660 .....	Pickaway County, Ohio .....	1840	0.9874	0.9860	18140	50204	0.9867
36670 .....	Pike County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36680 .....	Portage County, Ohio .....	0080	0.8982	0.8982	10420	10420	0.8982
36690 .....	Preble County, Ohio .....	36	0.8921	0.9064	19380	50102	0.8993
36700 .....	Putnam County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36710 .....	Richland County, Ohio .....	4800	0.9891	0.9891	31900	31900	0.9891
36720 .....	Ross County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36730 .....	Sandusky County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36740 .....	Scioto County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36750 .....	Seneca County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36760 .....	Shelby County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36770 .....	Stark County, Ohio .....	1320	0.8935	0.8935	15940	15940	0.8935
36780 .....	Summit County, Ohio .....	0080	0.8982	0.8982	10420	10420	0.8982
36790 .....	Trumbull County, Ohio .....	9320	0.8848	0.8603	49660	50353	0.8726
36800 .....	Tuscarawas County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36810 .....	Union County, Ohio .....	36	0.8921	0.9860	18140	50101	0.9391
36820 .....	Van Wert County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36830 .....	Vinton County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36840 .....	Warren County, Ohio .....	1640	0.9734	0.9615	17140	50197	0.9675
36850 .....	Washington County, Ohio .....	6020	0.8270	0.8270	37620	50297	0.8270
36860 .....	Wayne County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36870 .....	Williams County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
36880 .....	Wood County, Ohio .....	8400	0.9574	0.9574	45780	50339	0.9574
36890 .....	Wyandot County, Ohio .....	36	0.8921	0.8826	99936	50100	0.8874
37000 .....	Adair County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37010 .....	Alfalfa County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37020 .....	Atoka County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37030 .....	Beaver County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37040 .....	Beckham County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37050 .....	Blaine County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37060 .....	Bryan County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37070 .....	Caddo County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37080 .....	Canadian County, Oklahoma .....	5880	0.9025	0.9031	36420	50294	0.9028
37090 .....	Carter County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37100 .....	Cherokee County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37110 .....	Choctaw County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37120 .....	Cimarron County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37130 .....	Cleveland County, Oklahoma .....	5880	0.9025	0.9031	36420	50294	0.9028
37140 .....	Coal County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37150 .....	Comanche County, Oklahoma .....	4200	0.7872	0.7872	30020	30020	0.7872
37160 .....	Cotton County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37170 .....	Craig County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37180 .....	Creek County, Oklahoma .....	8560	0.8587	0.8543	46140	50341	0.8565
37190 .....	Custer County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37200 .....	Delaware County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37210 .....	Dewey County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37220 .....	Ellis County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37230 .....	Garfield County, Oklahoma .....	2340	0.8666	0.7581	99937	50218	0.8124
37240 .....	Garvin County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37250 .....	Grady County, Oklahoma .....	37	0.7442	0.9031	36420	50106	0.8237
37260 .....	Grant County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37270 .....	Greer County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37280 .....	Harmon County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37290 .....	Harper County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37300 .....	Haskell County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37310 .....	Hughes County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37320 .....	Jackson County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37330 .....	Jefferson County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
37340 .....	Johnston County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37350 .....	Kay County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37360 .....	Kingfisher County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37370 .....	Kiowa County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37380 .....	Latimer County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37390 .....	Le Flore County, Oklahoma .....	37	0.7442	0.8230	22900	50105	0.7836
37400 .....	Lincoln County, Oklahoma .....	37	0.7442	0.9031	36420	50106	0.8237
37410 .....	Logan County, Oklahoma .....	5880	0.9025	0.9031	36420	50294	0.9028
37420 .....	Love County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37430 .....	Mc Clain County, Oklahoma .....	5880	0.9025	0.9031	36420	50294	0.9028
37440 .....	Mc Curtain County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37450 .....	Mc Intosh County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37460 .....	Major County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37470 .....	Marshall County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37480 .....	Mayes County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37490 .....	Murray County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37500 .....	Muskogee County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37510 .....	Noble County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37520 .....	Nowata County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37530 .....	Okfuskee County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37540 .....	Oklahoma County, Oklahoma .....	5880	0.9025	0.9031	36420	50294	0.9028
37550 .....	Okmulgee County, Oklahoma .....	37	0.7442	0.8543	46140	50107	0.7993
37560 .....	Osage County, Oklahoma .....	8560	0.8587	0.8543	46140	50341	0.8565
37570 .....	Ottawa County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37580 .....	Pawnee County, Oklahoma .....	37	0.7442	0.8543	46140	50107	0.7993
37590 .....	Payne County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37600 .....	Pittsburg County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37610 .....	Pontotoc County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37620 .....	Pottawatomie County, Oklahoma .....	5880	0.9025	0.7581	99937	50293	0.8303
37630 .....	Pushmataha County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37640 .....	Roger Mills County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37650 .....	Rogers County, Oklahoma .....	8560	0.8587	0.8543	46140	50341	0.8565
37660 .....	Seminole County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37670 .....	Sequoyah County, Oklahoma .....	2720	0.8246	0.8230	22900	50224	0.8238
37680 .....	Stephens County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37690 .....	Texas County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37700 .....	Tillman County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37710 .....	Tulsa County, Oklahoma .....	8560	0.8587	0.8543	46140	50341	0.8565
37720 .....	Wagoner County, Oklahoma .....	8560	0.8587	0.8543	46140	50341	0.8565
37730 .....	Washington County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37740 .....	Washita County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37750 .....	Woods County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
37760 .....	Woodward County, Oklahoma .....	37	0.7442	0.7581	99937	50104	0.7512
38000 .....	Baker County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38010 .....	Benton County, Oregon .....	1890	1.0729	1.0729	18700	18700	1.0729
38020 .....	Clackamas County, Oregon .....	6440	1.1266	1.1266	38900	50304	1.1266
38030 .....	Clatsop County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38040 .....	Columbia County, Oregon .....	6440	1.1266	1.1266	38900	50304	1.1266
38050 .....	Coos County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38060 .....	Crook County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38070 .....	Curry County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38080 .....	Deschutes County, Oregon .....	38	1.0052	1.0786	13460	13460	1.0419
38090 .....	Douglas County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38100 .....	Gilliam County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38110 .....	Grant County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38120 .....	Harney County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38130 .....	Hood River County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38140 .....	Jackson County, Oregon .....	4890	1.0225	1.0225	32780	32780	1.0225
38150 .....	Jefferson County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38160 .....	Josephine County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38170 .....	Klamath County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38180 .....	Lake County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38190 .....	Lane County, Oregon .....	2400	1.0818	1.0818	21660	21660	1.0818
38200 .....	Lincoln County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38210 .....	Linn County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38220 .....	Malheur County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
38230 .....	Marion County, Oregon .....	7080	1.0442	1.0442	41420	41420	1.0442
38240 .....	Morrow County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38250 .....	Multnomah County, Oregon .....	6440	1.1266	1.1266	38900	50304	1.1266
38260 .....	Polk County, Oregon .....	7080	1.0442	1.0442	41420	41420	1.0442
38270 .....	Sherman County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38280 .....	Tillamook County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38290 .....	Umatilla County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38300 .....	Union County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38310 .....	Wallowa County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38320 .....	Wasco County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38330 .....	Washington County, Oregon .....	6440	1.1266	1.1266	38900	50304	1.1266
38340 .....	Wheeler County, Oregon .....	38	1.0052	0.9826	99938	99938	0.9939
38350 .....	Yamhill County, Oregon .....	6440	1.1266	1.1266	38900	50304	1.1266
39000 .....	Adams County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39010 .....	Allegheny County, Pennsylvania .....	6280	0.8860	0.8845	38300	50301	0.8853
39070 .....	Armstrong County, Pennsylvania .....	39	0.8319	0.8845	38300	50109	0.8582
39080 .....	Beaver County, Pennsylvania .....	6280	0.8860	0.8845	38300	50301	0.8853
39100 .....	Bedford County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39110 .....	Berks County, Pennsylvania .....	6680	0.9686	0.9686	39740	39740	0.9686
39120 .....	Blair County, Pennsylvania .....	0280	0.8944	0.8944	11020	11020	0.8944
39130 .....	Bradford County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39140 .....	Bucks County, Pennsylvania .....	6160	1.0922	1.1038	37964	37964	1.0980
39150 .....	Butler County, Pennsylvania .....	6280	0.8860	0.8845	38300	50301	0.8853
39160 .....	Cambria County, Pennsylvania .....	3680	0.8086	0.8354	27780	27780	0.8220
39180 .....	Cameron County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39190 .....	Carbon County, Pennsylvania .....	0240	0.9845	0.9818	10900	50167	0.9832
39200 .....	Centre County, Pennsylvania .....	8050	0.8356	0.8356	44300	44300	0.8356
39210 .....	Chester County, Pennsylvania .....	6160	1.0922	1.1038	37964	37964	1.0980
39220 .....	Clarion County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39230 .....	Clearfield County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39240 .....	Clinton County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39250 .....	Columbia County, Pennsylvania .....	7560	0.8524	0.8291	99939	50326	0.8408
39260 .....	Crawford County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39270 .....	Cumberland County, Pennsylvania .....	3240	0.9233	0.9313	25420	25420	0.9273
39280 .....	Dauphin County, Pennsylvania .....	3240	0.9233	0.9313	25420	25420	0.9273
39290 .....	Delaware County, Pennsylvania .....	6160	1.0922	1.1038	37964	37964	1.0980
39310 .....	Elk County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39320 .....	Erie County, Pennsylvania .....	2360	0.8737	0.8737	21500	21500	0.8737
39330 .....	Fayette County, Pennsylvania .....	6280	0.8860	0.8845	38300	50301	0.8853
39340 .....	Forest County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39350 .....	Franklin County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39360 .....	Fulton County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39370 .....	Greene County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39380 .....	Huntingdon County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39390 .....	Indiana County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39400 .....	Jefferson County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39410 .....	Juniata County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39420 .....	Lackawanna County, Pennsylvania .....	7560	0.8524	0.8540	42540	42540	0.8532
39440 .....	Lancaster County, Pennsylvania .....	4000	0.9694	0.9694	29540	29540	0.9694
39450 .....	Lawrence County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39460 .....	Lebanon County, Pennsylvania .....	3240	0.9233	0.8459	30140	30140	0.8846
39470 .....	Lehigh County, Pennsylvania .....	0240	0.9845	0.9818	10900	50167	0.9832
39480 .....	Luzerne County, Pennsylvania .....	7560	0.8524	0.8540	42540	42540	0.8532
39510 .....	Lycoming County, Pennsylvania .....	9140	0.8364	0.8364	48700	48700	0.8364
39520 .....	Mc Kean County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39530 .....	Mercer County, Pennsylvania .....	7610	0.7793	0.8603	49660	50328	0.8198
39540 .....	Mifflin County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39550 .....	Monroe County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39560 .....	Montgomery County, Pennsylvania .....	6160	1.0922	1.1038	37964	37964	1.0980
39580 .....	Montour County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39590 .....	Northampton County, Pennsylvania .....	0240	0.9845	0.9818	10900	50167	0.9832
39600 .....	Northumberland County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39610 .....	Perry County, Pennsylvania .....	3240	0.9233	0.9313	25420	25420	0.9273
39620 .....	Philadelphia County, Pennsylvania .....	6160	1.0922	1.1038	37964	37964	1.0980
39630 .....	Pike County, Pennsylvania .....	5660	1.1207	1.1883	35084	50290	1.1545
39640 .....	Potter County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
39650 .....	Schuylkill County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39670 .....	Snyder County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39680 .....	Somerset County, Pennsylvania .....	3680	0.8086	0.8291	99939	50250	0.8189
39690 .....	Sullivan County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39700 .....	Susquehanna County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39710 .....	Tioga County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39720 .....	Union County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39730 .....	Venango County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39740 .....	Warren County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39750 .....	Washington County, Pennsylvania .....	6280	0.8860	0.8845	38300	50301	0.8853
39760 .....	Wayne County, Pennsylvania .....	39	0.8319	0.8291	99939	50108	0.8305
39770 .....	Westmoreland County, Pennsylvania .....	6280	0.8860	0.8845	38300	50301	0.8853
39790 .....	Wyoming County, Pennsylvania .....	7560	0.8524	0.8540	42540	42540	0.8532
39800 .....	York County, Pennsylvania .....	9280	0.9347	0.9347	49620	49620	0.9347
40010 .....	Adjuntas County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40020 .....	Aguada County, Puerto Rico .....	0060	0.4876	0.4738	10380	50162	0.4807
40030 .....	Aguadilla County, Puerto Rico .....	0060	0.4876	0.4738	10380	50162	0.4807
40040 .....	Aguas Buenas County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40050 .....	Aibonito County, Puerto Rico .....	40	0.3604	0.4621	41980	50112	0.4113
40060 .....	Anasco County, Puerto Rico .....	4840	0.4243	0.4738	10380	50276	0.4491
40070 .....	Arecibo County, Puerto Rico .....	0470	0.4112	0.4621	41980	50172	0.4367
40080 .....	Arroyo County, Puerto Rico .....	40	0.3604	0.3181	25020	25020	0.3393
40090 .....	Barceloneta County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40100 .....	Barranquitas County, Puerto Rico .....	40	0.3604	0.4621	41980	50112	0.4113
40110 .....	Bayamon County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40120 .....	Cabo Rojo County, Puerto Rico .....	4840	0.4243	0.4650	41900	50277	0.4447
40130 .....	Caguas County, Puerto Rico .....	1310	0.4120	0.4621	41980	50188	0.4371
40140 .....	Camuy County, Puerto Rico .....	0470	0.4112	0.4621	41980	50172	0.4367
40145 .....	Canovanas County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40150 .....	Carolina County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40160 .....	Catano County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40170 .....	Cayey County, Puerto Rico .....	1310	0.4120	0.4621	41980	50188	0.4371
40180 .....	Ceiba County, Puerto Rico .....	7440	0.4752	0.4153	21940	21940	0.4453
40190 .....	Ciales County, Puerto Rico .....	40	0.3604	0.4621	41980	50112	0.4113
40200 .....	Cidra County, Puerto Rico .....	1310	0.4120	0.4621	41980	50188	0.4371
40210 .....	Coamo County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40220 .....	Comerio County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40230 .....	Corozal County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40240 .....	Culebra County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40250 .....	Dorado County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40260 .....	Fajardo County, Puerto Rico .....	7440	0.4752	0.4153	21940	21940	0.4453
40265 .....	Florida County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40270 .....	Guanica County, Puerto Rico .....	40	0.3604	0.4408	49500	50113	0.4006
40280 .....	Guayama County, Puerto Rico .....	40	0.3604	0.3181	25020	25020	0.3393
40290 .....	Guayanilla County, Puerto Rico .....	6360	0.4881	0.4408	49500	50303	0.4645
40300 .....	Guaynabo County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40310 .....	Gurabo County, Puerto Rico .....	1310	0.4120	0.4621	41980	50188	0.4371
40320 .....	Hatillo County, Puerto Rico .....	0470	0.4112	0.4621	41980	50172	0.4367
40330 .....	Hormigueros County, Puerto Rico .....	4840	0.4243	0.4020	32420	32420	0.4132
40340 .....	Humacao County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40350 .....	Isabela County, Puerto Rico .....	40	0.3604	0.4738	10380	50110	0.4171
40360 .....	Jayuya County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40370 .....	Juana Diaz County, Puerto Rico .....	6360	0.4881	0.4939	38660	38660	0.4910
40380 .....	Juncos County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40390 .....	Lajas County, Puerto Rico .....	40	0.3604	0.4650	41900	50111	0.4127
40400 .....	Lares County, Puerto Rico .....	40	0.3604	0.4738	10380	50110	0.4171
40410 .....	Las Marias County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40420 .....	Las Piedras County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40430 .....	Loiza County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40440 .....	Luquillo County, Puerto Rico .....	7440	0.4752	0.4153	21940	21940	0.4453
40450 .....	Manati County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40460 .....	Maricao County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40470 .....	Maunabo County, Puerto Rico .....	40	0.3604	0.4621	41980	50112	0.4113
40480 .....	Mayaguez County, Puerto Rico .....	4840	0.4243	0.4020	32420	32420	0.4132
40490 .....	Moca County, Puerto Rico .....	0060	0.4876	0.4738	10380	50162	0.4807
40500 .....	Morovis County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
40510 .....	Naguabo County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40520 .....	Naranjito County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40530 .....	Orocovis County, Puerto Rico .....	40	0.3604	0.4621	41980	50112	0.4113
40540 .....	Patillas County, Puerto Rico .....	40	0.3604	0.3181	25020	25020	0.3393
40550 .....	Penuelas County, Puerto Rico .....	6360	0.4881	0.4408	49500	50303	0.4645
40560 .....	Ponce County, Puerto Rico .....	6360	0.4881	0.4939	38660	38660	0.4910
40570 .....	Quebradillas County, Puerto Rico .....	40	0.3604	0.4621	41980	50112	0.4113
40580 .....	Rincon County, Puerto Rico .....	40	0.3604	0.4738	10380	50110	0.4171
40590 .....	Rio Grande County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40610 .....	Sabana Grande County, Puerto Rico .....	4840	0.4243	0.4650	41900	50277	0.4447
40620 .....	Salinas County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40630 .....	San German County, Puerto Rico .....	4840	0.4243	0.4650	41900	50277	0.4447
40640 .....	San Juan County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40650 .....	San Lorenzo County, Puerto Rico .....	11310	0.4120	0.4621	41980	50188	0.4371
40660 .....	San Sebastian County, Puerto Rico .....	40	0.3604	0.4738	10380	50110	0.4171
40670 .....	Santa Isabel County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40680 .....	Toa Alta County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40690 .....	Toa Baja County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40700 .....	Trujillo Alto County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40710 .....	Utua County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40720 .....	Vega Alta County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40730 .....	Vega Baja County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40740 .....	Vieques County, Puerto Rico .....	40	0.3604	0.4047	99940	99940	0.3826
40750 .....	Villalba County, Puerto Rico .....	6360	0.4881	0.4939	38660	38660	0.4910
40760 .....	Yabucoa County, Puerto Rico .....	7440	0.4752	0.4621	41980	50324	0.4687
40770 .....	Yauco County, Puerto Rico .....	6360	0.4881	0.4408	49500	50303	0.4645
41000 .....	Bristol County, Rhode Island .....	6483	1.1058	1.0966	39300	50305	1.1012
41010 .....	Kent County, Rhode Island .....	6483	1.1058	1.0966	39300	50305	1.1012
41020 .....	Newport County, Rhode Island .....	6483	1.1058	1.0966	39300	50305	1.1012
41030 .....	Providence County, Rhode Island .....	6483	1.1058	1.0966	39300	50305	1.1012
41050 .....	Washington County, Rhode Island .....	6483	1.1058	1.0966	39300	50305	1.1012
42000 .....	Abbeville County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42010 .....	Aiken County, S Carolina .....	0600	0.9808	0.9748	12260	50176	0.9778
42020 .....	Allendale County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42030 .....	Anderson County, S Carolina .....	3160	0.9615	0.8997	11340	11340	0.9306
42040 .....	Bamberg County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42050 .....	Barnwell County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42060 .....	Beaufort County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42070 .....	Berkeley County, S Carolina .....	1440	0.9245	0.9245	16700	16700	0.9245
42080 .....	Calhoun County, S Carolina .....	42	0.8631	0.9057	17900	50115	0.8844
42090 .....	Charleston County, S Carolina .....	1440	0.9245	0.9245	16700	16700	0.9245
42100 .....	Cherokee County, S Carolina .....	3160	0.9615	0.8638	99942	50237	0.9127
42110 .....	Chester County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42120 .....	Chesterfield County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42130 .....	Clarendon County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42140 .....	Colleton County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42150 .....	Darlington County, S Carolina .....	42	0.8631	0.8947	22500	50116	0.8789
42160 .....	Dillon County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42170 .....	Dorchester County, S Carolina .....	1440	0.9245	0.9245	16700	16700	0.9245
42180 .....	Edgefield County, S Carolina .....	0600	0.9808	0.9748	12260	50176	0.9778
42190 .....	Fairfield County, S Carolina .....	42	0.8631	0.9057	17900	50115	0.8844
42200 .....	Florence County, S Carolina .....	2655	0.9042	0.8947	22500	50223	0.8995
42210 .....	Georgetown County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42220 .....	Greenville County, S Carolina .....	3160	0.9615	1.0027	24860	50238	0.9821
42230 .....	Greenwood County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42240 .....	Hampton County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42250 .....	Horry County, S Carolina .....	5330	0.8934	0.8934	34820	34820	0.8934
42260 .....	Jasper County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42270 .....	Kershaw County, S Carolina .....	42	0.8631	0.9057	17900	50115	0.8844
42280 .....	Lancaster County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42290 .....	Laurens County, S Carolina .....	42	0.8631	1.0027	24860	50117	0.9329
42300 .....	Lee County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42310 .....	Lexington County, S Carolina .....	1760	0.9082	0.9057	17900	50202	0.9070
42320 .....	Mc Cormick County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42330 .....	Marion County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42340 .....	Marlboro County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
42350 .....	Newberry County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42360 .....	Oconee County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42370 .....	Orangeburg County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42380 .....	Pickens County, S Carolina .....	3160	0.9615	1.0027	24860	50238	0.9821
42390 .....	Richland County, S Carolina .....	1760	0.9082	0.9057	17900	50202	0.9070
42400 .....	Saluda County, S Carolina .....	42	0.8631	0.9057	17900	50115	0.8844
42410 .....	Spartanburg County, S Carolina .....	3160	0.9615	0.9172	43900	43900	0.9394
42420 .....	Sumter County, S Carolina .....	8140	0.8377	0.8377	44940	44940	0.8377
42430 .....	Union County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42440 .....	Williamsburg County, S Carolina .....	42	0.8631	0.8638	99942	50114	0.8635
42450 .....	York County, S Carolina .....	1520	0.9715	0.9750	16740	50193	0.9733
43010 .....	Aurora County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43020 .....	Beadle County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43030 .....	Bennett County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43040 .....	Bon Homme County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43050 .....	Brookings County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43060 .....	Brown County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43070 .....	Brule County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43080 .....	Buffalo County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43090 .....	Butte County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43100 .....	Campbell County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43110 .....	Charles Mix County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43120 .....	Clark County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43130 .....	Clay County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43140 .....	Codington County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43150 .....	Corson County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43160 .....	Custer County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43170 .....	Davison County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43180 .....	Day County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43190 .....	Deuel County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43200 .....	Dewey County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43210 .....	Douglas County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43220 .....	Edmunds County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43230 .....	Fall River County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43240 .....	Faulk County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43250 .....	Grant County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43260 .....	Gregory County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43270 .....	Haakon County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43280 .....	Hamlin County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43290 .....	Hand County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43300 .....	Hanson County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43310 .....	Harding County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43320 .....	Hughes County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43330 .....	Hutchinson County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43340 .....	Hyde County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43350 .....	Jackson County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43360 .....	Jerauld County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43370 .....	Jones County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43380 .....	Kingsbury County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43390 .....	Lake County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43400 .....	Lawrence County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43410 .....	Lincoln County, S Dakota .....	7760	0.9635	0.9635	43620	50332	0.9635
43420 .....	Lyman County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43430 .....	Mc Cook County, S Dakota .....	43	0.8551	0.9635	43620	50120	0.9093
43440 .....	Mc Pherson County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43450 .....	Marshall County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43460 .....	Meade County, S Dakota .....	43	0.8551	0.8987	39660	50118	0.8769
43470 .....	Mellette County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43480 .....	Miner County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43490 .....	Minnehaha County, S Dakota .....	7760	0.9635	0.9635	43620	50332	0.9635
43500 .....	Moody County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43510 .....	Pennington County, S Dakota .....	6660	0.8987	0.8987	39660	50308	0.8987
43520 .....	Perkins County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43530 .....	Potter County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43540 .....	Roberts County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43550 .....	Sanborn County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556



## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
43560 .....	Shannon County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43570 .....	Spink County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43580 .....	Stanley County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43590 .....	Sully County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43600 .....	Todd County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43610 .....	Tripp County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43620 .....	Turner County, S Dakota .....	43	0.8551	0.9635	43620	50120	0.9093
43630 .....	Union County, S Dakota .....	43	0.8551	0.9381	43580	50119	0.8966
43640 .....	Walworth County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43650 .....	Washabaugh County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43670 .....	Yankton County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
43680 .....	Ziebach County, S Dakota .....	43	0.8551	0.8560	99943	99943	0.8556
44000 .....	Anderson County, Tennessee .....	3840	0.8397	0.8441	28940	28940	0.8419
44010 .....	Bedford County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44020 .....	Benton County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44030 .....	Bledsoe County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44040 .....	Blount County, Tennessee .....	3840	0.8397	0.8441	28940	28940	0.8419
44050 .....	Bradley County, Tennessee .....	44	0.7935	0.8139	17420	17420	0.8037
44060 .....	Campbell County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44070 .....	Cannon County, Tennessee .....	44	0.7935	0.9790	34980	50124	0.8863
44080 .....	Carroll County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44090 .....	Carter County, Tennessee .....	3660	0.8007	0.7937	27740	27740	0.7972
44100 .....	Cheatham County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
44110 .....	Chester County, Tennessee .....	3580	0.8964	0.8964	27180	27180	0.8964
44120 .....	Claiborne County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44130 .....	Clay County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44140 .....	Cocke County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44150 .....	Coffee County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44160 .....	Crockett County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44170 .....	Cumberland County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44180 .....	Davidson County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
44190 .....	Decatur County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44200 .....	De Kalb County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44210 .....	Dickson County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
44220 .....	Dyer County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44230 .....	Fayette County, Tennessee .....	4920	0.9416	0.9397	32820	50278	0.9407
44240 .....	Fentress County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44250 .....	Franklin County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44260 .....	Gibson County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44270 .....	Giles County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44280 .....	Grainger County, Tennessee .....	44	0.7935	0.7961	34100	34100	0.7948
44290 .....	Greene County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44300 .....	Grundy County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44310 .....	Hamblen County, Tennessee .....	44	0.7935	0.7961	34100	34100	0.7948
44320 .....	Hamilton County, Tennessee .....	1560	0.9088	0.9088	16860	50195	0.9088
44330 .....	Hancock County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44340 .....	Hardeman County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44350 .....	Hardin County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44360 .....	Hawkins County, Tennessee .....	3660	0.8007	0.8054	28700	28700	0.8031
44370 .....	Haywood County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44380 .....	Henderson County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44390 .....	Henry County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44400 .....	Hickman County, Tennessee .....	44	0.7935	0.9790	34980	50124	0.8863
44410 .....	Houston County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44420 .....	Humphreys County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44430 .....	Jackson County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44440 .....	Jefferson County, Tennessee .....	44	0.7935	0.7961	34100	34100	0.7948
44450 .....	Johnson County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44460 .....	Knox County, Tennessee .....	3840	0.8397	0.8441	28940	28940	0.8419
44470 .....	Lake County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44480 .....	Lauderdale County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44490 .....	Lawrence County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44500 .....	Lewis County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44510 .....	Lincoln County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44520 .....	Loudon County, Tennessee .....	3840	0.8397	0.8441	28940	28940	0.8419
44530 .....	Mc Minn County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
44540 .....	Mc Nairy County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44550 .....	Macon County, Tennessee .....	44	0.7935	0.9790	34980	50124	0.8863
44560 .....	Madison County, Tennessee .....	3580	0.8964	0.8964	27180	27180	0.8964
44570 .....	Marion County, Tennessee .....	1560	0.9088	0.9088	16860	50195	0.9088
44580 .....	Marshall County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44590 .....	Maury County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44600 .....	Meigs County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44610 .....	Monroe County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44620 .....	Montgomery County, Tennessee .....	1660	0.8284	0.8284	17300	50198	0.8284
44630 .....	Moore County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44640 .....	Morgan County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44650 .....	Obion County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44660 .....	Overton County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44670 .....	Perry County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44680 .....	Pickett County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44690 .....	Polk County, Tennessee .....	44	0.7935	0.8139	17420	17420	0.8037
44700 .....	Putnam County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44710 .....	Rhea County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44720 .....	Roane County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44730 .....	Robertson County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
44740 .....	Rutherford County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
44750 .....	Scott County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44760 .....	Sequatchie County, Tennessee .....	44	0.7935	0.9088	16860	50122	0.8512
44770 .....	Sevier County, Tennessee .....	3840	0.8397	0.7895	99944	50255	0.8146
44780 .....	Shelby County, Tennessee .....	4920	0.9416	0.9397	32820	50278	0.9407
44790 .....	Smith County, Tennessee .....	44	0.7935	0.9790	34980	50124	0.8863
44800 .....	Stewart County, Tennessee .....	44	0.7935	0.8284	17300	50123	0.8110
44810 .....	Sullivan County, Tennessee .....	3660	0.8007	0.8054	28700	28700	0.8031
44820 .....	Sumner County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
44830 .....	Tipton County, Tennessee .....	4920	0.9416	0.9397	32820	50278	0.9407
44840 .....	Trousdale County, Tennessee .....	44	0.7935	0.9790	34980	50124	0.8863
44850 .....	Unicoi County, Tennessee .....	3660	0.8007	0.7937	27740	27740	0.7972
44860 .....	Union County, Tennessee .....	3840	0.8397	0.8441	28940	28940	0.8419
44870 .....	Van Buren County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44880 .....	Warren County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44890 .....	Washington County, Tennessee .....	3660	0.8007	0.7937	27740	27740	0.7972
44900 .....	Wayne County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44910 .....	Weakley County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44920 .....	White County, Tennessee .....	44	0.7935	0.7895	99944	50121	0.7915
44930 .....	Williamson County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
44940 .....	Wilson County, Tennessee .....	5360	0.9808	0.9790	34980	50285	0.9799
45000 .....	Anderson County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45010 .....	Andrews County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45020 .....	Angelina County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45030 .....	Aransas County, Texas .....	45	0.7931	0.8550	18580	50129	0.8241
45040 .....	Archer County, Texas .....	9080	0.8365	0.8285	48660	50348	0.8325
45050 .....	Armstrong County, Texas .....	45	0.7931	0.9156	11100	50127	0.8544
45060 .....	Atascosa County, Texas .....	45	0.7931	0.8980	41700	50137	0.8456
45070 .....	Austin County, Texas .....	45	0.7931	0.9996	26420	50132	0.8964
45080 .....	Bailey County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45090 .....	Bandera County, Texas .....	45	0.7931	0.8980	41700	50137	0.8456
45100 .....	Bastrop County, Texas .....	0640	0.9437	0.9437	12420	12420	0.9437
45110 .....	Baylor County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45113 .....	Bee County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45120 .....	Bell County, Texas .....	3810	0.8526	0.8526	28660	50254	0.8526
45130 .....	Bexar County, Texas .....	7240	0.8984	0.8980	41700	50322	0.8982
45140 .....	Blanco County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45150 .....	Borden County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45160 .....	Bosque County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45170 .....	Bowie County, Texas .....	8360	0.8283	0.8283	45500	45500	0.8283
45180 .....	Brazoria County, Texas .....	1145	0.8563	0.9996	26420	50186	0.9280
45190 .....	Brazos County, Texas .....	1260	0.8900	0.8900	17780	50187	0.8900
45200 .....	Brewster County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45201 .....	Briscoe County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45210 .....	Brooks County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45220 .....	Brown County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
45221 .....	Burleson County, Texas .....	45	0.7931	0.8900	17780	50128	0.8416
45222 .....	Burnet County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45223 .....	Caldwell County, Texas .....	0640	0.9437	0.9437	12420	12420	0.9437
45224 .....	Calhoun County, Texas .....	45	0.7931	0.8160	47020	50138	0.8046
45230 .....	Callahan County, Texas .....	45	0.7931	0.7896	10180	50126	0.7914
45240 .....	Cameron County, Texas .....	1240	0.9804	0.9804	15180	15180	0.9804
45250 .....	Camp County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45251 .....	Carson County, Texas .....	45	0.7931	0.9156	11100	50127	0.8544
45260 .....	Cass County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45270 .....	Castro County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45280 .....	Chambers County, Texas .....	3360	1.0091	0.9996	26420	50242	1.0044
45281 .....	Cherokee County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45290 .....	Childress County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45291 .....	Clay County, Texas .....	45	0.7931	0.8285	48660	50139	0.8108
45292 .....	Cochran County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45300 .....	Coke County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45301 .....	Coleman County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45310 .....	Collin County, Texas .....	1920	1.0205	1.0228	19124	50207	1.0217
45311 .....	Collingsworth County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45312 .....	Colorado County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45320 .....	Comal County, Texas .....	7240	0.8984	0.8980	41700	50322	0.8982
45321 .....	Comanche County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45330 .....	Concho County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45340 .....	Cooke County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45341 .....	Coryell County, Texas .....	3810	0.8526	0.8526	28660	50254	0.8526
45350 .....	Cottle County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45360 .....	Crane County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45361 .....	Crockett County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45362 .....	Crosby County, Texas .....	45	0.7931	0.8783	31180	50135	0.8357
45370 .....	Culberson County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45380 .....	Dallam County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45390 .....	Dallas County, Texas .....	1920	1.0205	1.0228	19124	50207	1.0217
45391 .....	Dawson County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45392 .....	Deaf Smith County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45400 .....	Delta County, Texas .....	45	0.7931	1.0228	19124	50130	0.9080
45410 .....	Denton County, Texas .....	1920	1.0205	1.0228	19124	50207	1.0217
45420 .....	De Witt County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45421 .....	Dickens County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45430 .....	Dimmit County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45431 .....	Donley County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45440 .....	Duval County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45450 .....	Eastland County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45451 .....	Ector County, Texas .....	5800	0.9741	0.9884	36220	36220	0.9813
45460 .....	Edwards County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45470 .....	Ellis County, Texas .....	1920	1.0205	1.0228	19124	50207	1.0217
45480 .....	El Paso County, Texas .....	2320	0.8977	0.8977	21340	21340	0.8977
45490 .....	Erath County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45500 .....	Falls County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45510 .....	Fannin County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45511 .....	Fayette County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45520 .....	Fisher County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45521 .....	Floyd County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45522 .....	Foard County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45530 .....	Fort Bend County, Texas .....	3360	1.0091	0.9996	26420	50242	1.0044
45531 .....	Franklin County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45540 .....	Freestone County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45541 .....	Frio County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45542 .....	Gaines County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45550 .....	Galveston County, Texas .....	2920	0.9635	0.9996	26420	50229	0.9816
45551 .....	Garza County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45552 .....	Gillespie County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45560 .....	Glasscock County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45561 .....	Goliad County, Texas .....	45	0.7931	0.8160	47020	50138	0.8046
45562 .....	Gonzales County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45563 .....	Gray County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45564 .....	Grayson County, Texas .....	7640	0.9507	0.9507	43300	43300	0.9507

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
45570 .....	Gregg County, Texas .....	4420	0.8888	0.8730	30980	50267	0.8809
45580 .....	Grimes County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45581 .....	Guadalupe County, Texas .....	7240	0.8984	0.8980	41700	50322	0.8982
45582 .....	Hale County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45583 .....	Hall County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45590 .....	Hamilton County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45591 .....	Hansford County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45592 .....	Hardeman County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45600 .....	Hardin County, Texas .....	0840	0.8412	0.8412	13140	13140	0.8412
45610 .....	Harris County, Texas .....	3360	1.0091	0.9996	26420	50242	1.0044
45620 .....	Harrison County, Texas .....	4420	0.8888	0.8003	99945	50266	0.8446
45621 .....	Hartley County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45630 .....	Haskell County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45631 .....	Hays County, Texas .....	0640	0.9437	0.9437	12420	12420	0.9437
45632 .....	Hemphill County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45640 .....	Henderson County, Texas .....	1920	1.0205	0.8003	99945	50206	0.9104
45650 .....	Hidalgo County, Texas .....	4880	0.8934	0.8934	32580	32580	0.8934
45651 .....	Hill County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45652 .....	Hockley County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45653 .....	Hood County, Texas .....	2800	0.9522	0.8003	99945	50226	0.8763
45654 .....	Hopkins County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45660 .....	Houston County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45661 .....	Howard County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45662 .....	Hudspeth County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45670 .....	Hunt County, Texas .....	1920	1.0205	1.0228	19124	50207	1.0217
45671 .....	Hutchinson County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45672 .....	Irion County, Texas .....	45	0.7931	0.8271	41660	50136	0.8101
45680 .....	Jack County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45681 .....	Jackson County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45690 .....	Jasper County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45691 .....	Jeff Davis County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45700 .....	Jefferson County, Texas .....	0840	0.8412	0.8412	13140	13140	0.8412
45710 .....	Jim Hogg County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45711 .....	Jim Wells County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45720 .....	Johnson County, Texas .....	2800	0.9522	0.9486	23104	50227	0.9504
45721 .....	Jones County, Texas .....	45	0.7931	0.7896	10180	50126	0.7914
45722 .....	Karnes County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45730 .....	Kaufman County, Texas .....	1920	1.0205	1.0228	19124	50207	1.0217
45731 .....	Kendall County, Texas .....	45	0.7931	0.8980	41700	50137	0.8456
45732 .....	Kenedy County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45733 .....	Kent County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45734 .....	Kerr County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45740 .....	Kimble County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45741 .....	King County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45742 .....	Kinney County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45743 .....	Kleberg County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45744 .....	Knox County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45750 .....	Lamar County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45751 .....	Lamb County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45752 .....	Lampasas County, Texas .....	45	0.7931	0.8526	28660	50133	0.8229
45753 .....	La Salle County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45754 .....	Lavaca County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45755 .....	Lee County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45756 .....	Leon County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45757 .....	Liberty County, Texas .....	3360	1.0091	0.9996	26420	50242	1.0044
45758 .....	Limestone County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45759 .....	Lipscomb County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45760 .....	Live Oak County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45761 .....	Llano County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45762 .....	Loving County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45770 .....	Lubbock County, Texas .....	4600	0.8783	0.8783	31180	50270	0.8783
45771 .....	Lynn County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45772 .....	Mc Culloch County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45780 .....	Mc Lennan County, Texas .....	8800	0.8518	0.8518	47380	47380	0.8518
45781 .....	Mc Mullen County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45782 .....	Madison County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
45783 .....	Marion County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45784 .....	Martin County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45785 .....	Mason County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45790 .....	Matagorda County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45791 .....	Maverick County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45792 .....	Medina County, Texas .....	45	0.7931	0.8980	41700	50137	0.8456
45793 .....	Menard County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45794 .....	Midland County, Texas .....	5800	0.9741	0.9514	33260	33260	0.9628
45795 .....	Milam County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45796 .....	Mills County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45797 .....	Mitchell County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45800 .....	Montague County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45801 .....	Montgomery County, Texas .....	3360	1.0091	0.9996	26420	50242	1.0044
45802 .....	Moore County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45803 .....	Morris County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45804 .....	Motley County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45810 .....	Nacogdoches County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45820 .....	Navarro County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45821 .....	Newton County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45822 .....	Nolan County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45830 .....	Nueces County, Texas .....	1880	0.8550	0.8550	18580	50205	0.8550
45831 .....	Ochiltree County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45832 .....	Oldham County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45840 .....	Orange County, Texas .....	0840	0.8412	0.8412	13140	13140	0.8412
45841 .....	Palo Pinto County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45842 .....	Panola County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45843 .....	Parker County, Texas .....	2800	0.9522	0.9486	23104	50227	0.9504
45844 .....	Parmer County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45845 .....	Pecos County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45850 .....	Polk County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45860 .....	Potter County, Texas .....	0320	0.9156	0.9156	11100	50168	0.9156
45861 .....	Presidio County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45870 .....	Rains County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45871 .....	Randall County, Texas .....	0320	0.9156	0.9156	11100	50168	0.9156
45872 .....	Reagan County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45873 .....	Real County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45874 .....	Red River County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45875 .....	Reeves County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45876 .....	Refugio County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45877 .....	Roberts County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45878 .....	Robertson County, Texas .....	45	0.7931	0.8900	17780	50128	0.8416
45879 .....	Rockwall County, Texas .....	1920	1.0205	1.0228	19124	50207	1.0217
45880 .....	Runnels County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45881 .....	Rusk County, Texas .....	45	0.7931	0.8730	30980	50134	0.8331
45882 .....	Sabine County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45883 .....	San Augustine County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45884 .....	San Jacinto County, Texas .....	45	0.7931	0.9996	26420	50132	0.8964
45885 .....	San Patricio County, Texas .....	1880	0.8550	0.8550	18580	50205	0.8550
45886 .....	San Saba County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45887 .....	Schleicher County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45888 .....	Scurry County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45889 .....	Shackelford County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45890 .....	Shelby County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45891 .....	Sherman County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45892 .....	Smith County, Texas .....	8640	0.9168	0.9168	46340	46340	0.9168
45893 .....	Somervell County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45900 .....	Starr County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45901 .....	Stephens County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45902 .....	Sterling County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45903 .....	Stonewall County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45904 .....	Sutton County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45905 .....	Swisher County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45910 .....	Tarrant County, Texas .....	2800	0.9522	0.9486	23104	50227	0.9504
45911 .....	Taylor County, Texas .....	0040	0.8054	0.7896	10180	50161	0.7975
45912 .....	Terrell County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45913 .....	Terry County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
45920 .....	Throckmorton County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45921 .....	Titus County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45930 .....	Tom Green County, Texas .....	7200	0.8271	0.8271	41660	50321	0.8271
45940 .....	Travis County, Texas .....	0640	0.9437	0.9437	12420	12420	0.9437
45941 .....	Trinity County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45942 .....	Tyler County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45943 .....	Upshur County, Texas .....	4420	0.8888	0.8730	30980	50267	0.8809
45944 .....	Upton County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45945 .....	Uvalde County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45946 .....	Val Verde County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45947 .....	Van Zandt County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45948 .....	Victoria County, Texas .....	8750	0.8160	0.8160	47020	50343	0.8160
45949 .....	Walker County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45950 .....	Waller County, Texas .....	3360	1.0091	0.9996	26420	50242	1.0044
45951 .....	Ward County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45952 .....	Washington County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45953 .....	Webb County, Texas .....	4080	0.8068	0.8068	29700	29700	0.8068
45954 .....	Wharton County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45955 .....	Wheeler County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45960 .....	Wichita County, Texas .....	9080	0.8365	0.8285	48660	50348	0.8325
45961 .....	Wilbarger County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45962 .....	Willacy County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45970 .....	Williamson County, Texas .....	0640	0.9437	0.9437	12420	12420	0.9437
45971 .....	Wilson County, Texas .....	7240	0.8984	0.8980	41700	50322	0.8982
45972 .....	Winkler County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45973 .....	Wise County, Texas .....	45	0.7931	0.9486	23104	50131	0.8709
45974 .....	Wood County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45980 .....	Yoakum County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45981 .....	Young County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45982 .....	Zapata County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
45983 .....	Zavala County, Texas .....	45	0.7931	0.8003	99945	50125	0.7967
46000 .....	Beaver County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46010 .....	Box Elder County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46020 .....	Cache County, Utah .....	46	0.8762	0.9164	30860	50141	0.8963
46030 .....	Carbon County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46040 .....	Daggett County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46050 .....	Davis County, Utah .....	7160	0.9340	0.9029	36260	50319	0.9185
46060 .....	Duchesne County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46070 .....	Emery County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46080 .....	Garfield County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46090 .....	Grand County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46100 .....	Iron County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46110 .....	Juab County, Utah .....	46	0.8762	0.9500	39340	50143	0.9131
46120 .....	Kane County, Utah .....	2620	1.1845	0.8118	99946	50222	0.9982
46130 .....	Millard County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46140 .....	Morgan County, Utah .....	46	0.8762	0.9029	36260	50142	0.8896
46150 .....	Piute County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46160 .....	Rich County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46170 .....	Salt Lake County, Utah .....	7160	0.9340	0.9421	41620	50320	0.9381
46180 .....	San Juan County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46190 .....	Sanpete County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46200 .....	Sevier County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46210 .....	Summit County, Utah .....	46	0.8762	0.9421	41620	50144	0.9092
46220 .....	Tooele County, Utah .....	46	0.8762	0.9421	41620	50144	0.9092
46230 .....	Uintah County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46240 .....	Utah County, Utah .....	6520	0.9500	0.9500	39340	50306	0.9500
46250 .....	Wasatch County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46260 .....	Washington County, Utah .....	46	0.8762	0.9392	41100	41100	0.9077
46270 .....	Wayne County, Utah .....	46	0.8762	0.8118	99946	50140	0.8440
46280 .....	Weber County, Utah .....	7160	0.9340	0.9029	36260	50319	0.9185
47000 .....	Addison County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47010 .....	Bennington County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47020 .....	Caledonia County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47030 .....	Chittenden County, Vermont .....	1303	0.9410	0.9410	15540	15540	0.9410
47040 .....	Essex County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47050 .....	Franklin County, Vermont .....	1303	0.9410	0.9410	15540	15540	0.9410

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
47060 .....	Grand Isle County, Vermont .....	1303	0.9410	0.9410	15540	15540	0.9410
47070 .....	Lamoille County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47080 .....	Orange County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47090 .....	Orleans County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47100 .....	Rutland County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47110 .....	Washington County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47120 .....	Windham County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
47130 .....	Windsor County, Vermont .....	47	0.9830	0.9830	99947	99947	0.9830
48010 .....	St Croix County, Virgin Islands .....	48	0.7615	0.7615	99948	99948	0.7615
48020 .....	St Thomas-John County, Virgin Islands .....	48	0.7615	0.7615	99948	99948	0.7615
49000 .....	Accomack County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49010 .....	Albemarle County, Virginia .....	1540	1.0187	1.0187	16820	50194	1.0187
49011 .....	Alexandria City County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49020 .....	Alleghany County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49030 .....	Amelia County, Virginia .....	49	0.8417	0.9328	40060	50148	0.8873
49040 .....	Amherst County, Virginia .....	4640	0.8691	0.8691	31340	50271	0.8691
49050 .....	Appomattox County, Virginia .....	49	0.8417	0.8691	31340	50147	0.8554
49060 .....	Arlington County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49070 .....	Augusta County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49080 .....	Bath County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49088 .....	Bedford City County, Virginia .....	4640	0.8691	0.8691	31340	50271	0.8691
49090 .....	Bedford County, Virginia .....	4640	0.8691	0.8691	31340	50271	0.8691
49100 .....	Bland County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49110 .....	Botetourt County, Virginia .....	6800	0.8387	0.8374	40220	50311	0.8381
49111 .....	Bristol City County, Virginia .....	3660	0.8007	0.8054	28700	28700	0.8031
49120 .....	Brunswick County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49130 .....	Buchanan County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49140 .....	Buckingham County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49141 .....	Buena Vista City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49150 .....	Campbell County, Virginia .....	4640	0.8691	0.8691	31340	50271	0.8691
49160 .....	Caroline County, Virginia .....	49	0.8417	0.9328	40060	50148	0.8873
49170 .....	Carroll County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49180 .....	Charles City County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49190 .....	Charlotte County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49191 .....	Charlottesville City County, Virginia .....	1540	1.0187	1.0187	16820	50194	1.0187
49194 .....	Chesapeake County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49200 .....	Chesterfield County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49210 .....	Clarke County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49211 .....	Clifton Forge City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49212 .....	Colonial Heights County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49213 .....	Covington City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49220 .....	Craig County, Virginia .....	49	0.8417	0.8374	40220	50149	0.8396
49230 .....	Culpeper County, Virginia .....	8840	1.0976	0.8013	99949	50344	0.9495
49240 .....	Cumberland County, Virginia .....	49	0.8417	0.9328	40060	50148	0.8873
49241 .....	Danville City County, Virginia .....	1950	0.8489	0.8489	19260	19260	0.8489
49250 .....	Dickenson County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49260 .....	Dinniddie County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49270 .....	Emporia County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49280 .....	Essex County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49288 .....	Fairfax City County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49290 .....	Fairfax County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49291 .....	Falls Church City County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49300 .....	Fauquier County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49310 .....	Floyd County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49320 .....	Fluvanna County, Virginia .....	1540	1.0187	1.0187	16820	50194	1.0187
49328 .....	Franklin City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49330 .....	Franklin County, Virginia .....	49	0.8417	0.8374	40220	50149	0.8396
49340 .....	Frederick County, Virginia .....	49	0.8417	1.0214	49020	50151	0.9316
49342 .....	Fredericksburg City County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49343 .....	Galax City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49350 .....	Giles County, Virginia .....	49	0.8417	0.7954	13980	13980	0.8186
49360 .....	Gloucester County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49370 .....	Goochland County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49380 .....	Grayson County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49390 .....	Greene County, Virginia .....	1540	1.0187	1.0187	16820	50194	1.0187
49400 .....	Greensville County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
49410 .....	Halifax County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49411 .....	Hampton City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49420 .....	Hanover County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49421 .....	Harrisonburg City County, Virginia .....	49	0.8417	0.9088	25500	25500	0.8753
49430 .....	Henrico County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49440 .....	Henry County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49450 .....	Highland County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49451 .....	Hopewell City County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49460 .....	Isle Of Wight County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49470 .....	James City Co County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49480 .....	King And Queen County, Virginia .....	49	0.8417	0.9328	40060	50148	0.8873
49490 .....	King George County, Virginia .....	8840	1.0976	0.8013	99949	50344	0.9495
49500 .....	King William County, Virginia .....	49	0.8417	0.9328	40060	50148	0.8873
49510 .....	Lancaster County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49520 .....	Lee County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49522 .....	Lexington County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49530 .....	Loudoun County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49540 .....	Louisa County, Virginia .....	49	0.8417	0.9328	40060	50148	0.8873
49550 .....	Lunenburg County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49551 .....	Lynchburg City County, Virginia .....	4640	0.8691	0.8691	31340	50271	0.8691
49560 .....	Madison County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49561 .....	Martinsville City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49563 .....	Manassas City County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49565 .....	Manassas Park City County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49570 .....	Mathews County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49580 .....	Mecklenburg County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49590 .....	Middlesex County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49600 .....	Montgomery County, Virginia .....	49	0.8417	0.7954	13980	13980	0.8186
49610 .....	Nansemond, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49620 .....	Nelson County, Virginia .....	49	0.8417	1.0187	16820	50146	0.9302
49621 .....	New Kent County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49622 .....	Newport News City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49641 .....	Norfolk City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49650 .....	Northampton County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49660 .....	Northumberland County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49661 .....	Norton City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49670 .....	Nottoway County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49680 .....	Orange County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49690 .....	Page County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49700 .....	Patrick County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49701 .....	Petersburg City County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49710 .....	Pittsylvania County, Virginia .....	1950	0.8489	0.8489	19260	19260	0.8489
49711 .....	Portsmouth City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49712 .....	Poquoson City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49720 .....	Powhatan County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49730 .....	Prince Edward County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49740 .....	Prince George County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49750 .....	Prince William County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49770 .....	Pulaski County, Virginia .....	49	0.8417	0.7954	13980	13980	0.8186
49771 .....	Radford City County, Virginia .....	49	0.8417	0.7954	13980	13980	0.8186
49780 .....	Rappahannock County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49790 .....	Richmond County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49791 .....	Richmond City County, Virginia .....	6760	0.9328	0.9328	40060	50310	0.9328
49800 .....	Roanoke County, Virginia .....	6800	0.8387	0.8374	40220	50311	0.8381
49801 .....	Roanoke City County, Virginia .....	6800	0.8387	0.8374	40220	50311	0.8381
49810 .....	Rockbridge County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49820 .....	Rockingham County, Virginia .....	49	0.8417	0.9088	25500	25500	0.8753
49830 .....	Russell County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49838 .....	Salem County, Virginia .....	6800	0.8387	0.8374	40220	50311	0.8381
49840 .....	Scott County, Virginia .....	3660	0.8007	0.8054	28700	28700	0.8031
49850 .....	Shenandoah County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49860 .....	Smyth County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49867 .....	South Boston City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49870 .....	Southampton County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49880 .....	Spotsylvania County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49890 .....	Stafford County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951



## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
49891 .....	Staunton City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49892 .....	Suffolk City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49900 .....	Surry County, Virginia .....	49	0.8417	0.8799	47260	50150	0.8608
49910 .....	Sussex County, Virginia .....	49	0.8417	0.9328	40060	50148	0.8873
49920 .....	Tazewell County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49921 .....	Virginia Beach City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49930 .....	Warren County, Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
49950 .....	Washington County, Virginia .....	3660	0.8007	0.8054	28700	28700	0.8031
49951 .....	Waynesboro City County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49960 .....	Westmoreland County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49961 .....	Williamsburg City County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
49962 .....	Winchester City County, Virginia .....	49	0.8417	1.0214	49020	50151	0.9316
49970 .....	Wise County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49980 .....	Wythe County, Virginia .....	49	0.8417	0.8013	99949	50145	0.8215
49981 .....	York County, Virginia .....	5720	0.8799	0.8799	47260	50292	0.8799
50000 .....	Adams County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50010 .....	Asotin County, Washington .....	50	1.0217	0.9886	30300	50153	1.0052
50020 .....	Benton County, Washington .....	6740	1.0619	1.0619	28420	28420	1.0619
50030 .....	Chelan County, Washington .....	50	1.0217	1.0070	48300	48300	1.0144
50040 .....	Clallam County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50050 .....	Clark County, Washington .....	6440	1.1266	1.1266	38900	50304	1.1266
50060 .....	Columbia County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50070 .....	Cowlitz County, Washington .....	50	1.0217	0.9579	31020	31020	0.9898
50080 .....	Douglas County, Washington .....	50	1.0217	1.0070	48300	48300	1.0144
50090 .....	Ferry County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50100 .....	Franklin County, Washington .....	6740	1.0619	1.0619	28420	28420	1.0619
50110 .....	Garfield County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50120 .....	Grant County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50130 .....	Grays Harbor County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50140 .....	Island County, Washington .....	7600	1.1567	1.0510	99950	50327	1.1039
50150 .....	Jefferson County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50160 .....	King County, Washington .....	7600	1.1567	1.1577	42644	42644	1.1572
50170 .....	Kitsap County, Washington .....	1150	1.0675	1.0675	14740	14740	1.0675
50180 .....	Kittitas County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50190 .....	Klickitat County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50200 .....	Lewis County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50210 .....	Lincoln County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50220 .....	Mason County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50230 .....	Okanogan County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50240 .....	Pacific County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50250 .....	Pend Oreille County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50260 .....	Pierce County, Washington .....	8200	1.0742	1.0742	45104	45104	1.0742
50270 .....	San Juan County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50280 .....	Skagit County, Washington .....	50	1.0217	1.0454	34580	34580	1.0336
50290 .....	Skamania County, Washington .....	50	1.0217	1.1266	38900	50154	1.0742
50300 .....	Snohomish County, Washington .....	7600	1.1567	1.1577	42644	42644	1.1572
50310 .....	Spokane County, Washington .....	7840	1.0905	1.0905	44060	44060	1.0905
50320 .....	Stevens County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50330 .....	Thurston County, Washington .....	5910	1.0927	1.0927	36500	36500	1.0927
50340 .....	Wahkiakum County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50350 .....	Walla Walla County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50360 .....	Whatcom County, Washington .....	0860	1.1731	1.1731	13380	13380	1.1731
50370 .....	Whitman County, Washington .....	50	1.0217	1.0510	99950	50152	1.0364
50380 .....	Yakima County, Washington .....	9260	1.0155	1.0155	49420	49420	1.0155
51000 .....	Barbour County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51010 .....	Berkeley County, W Virginia .....	8840	1.0976	0.9489	25180	50345	1.0233
51020 .....	Boone County, W Virginia .....	51	0.7900	0.8445	16620	50155	0.8173
51030 .....	Braxton County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51040 .....	Brooke County, W Virginia .....	8080	0.7819	0.7819	48260	48260	0.7819
51050 .....	Cabell County, W Virginia .....	3400	0.9477	0.9477	26580	26580	0.9477
51060 .....	Calhoun County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51070 .....	Clay County, W Virginia .....	51	0.7900	0.8445	16620	50155	0.8173
51080 .....	Doddridge County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51090 .....	Fayette County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51100 .....	Gilmer County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51110 .....	Grant County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
51120 .....	Greenbrier County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51130 .....	Hampshire County, W Virginia .....	51	0.7900	1.0214	49020	50158	0.9057
51140 .....	Hancock County, W Virginia .....	8080	0.7819	0.7819	48260	48260	0.7819
51150 .....	Hardy County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51160 .....	Harrison County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51170 .....	Jackson County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51180 .....	Jefferson County, W Virginia .....	8840	1.0976	1.0926	47894	47894	1.0951
51190 .....	Kanawha County, W Virginia .....	1480	0.8445	0.8445	16620	50191	0.8445
51200 .....	Lewis County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51210 .....	Lincoln County, W Virginia .....	51	0.7900	0.8445	16620	50155	0.8173
51220 .....	Logan County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51230 .....	Mc Dowell County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51240 .....	Marion County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51250 .....	Marshall County, W Virginia .....	9000	0.7161	0.7161	48540	48540	0.7161
51260 .....	Mason County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51270 .....	Mercer County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51280 .....	Mineral County, W Virginia .....	1900	0.9317	0.9317	19060	19060	0.9317
51290 .....	Mingo County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51300 .....	Monongalia County, W Virginia .....	51	0.7900	0.8420	34060	34060	0.8160
51310 .....	Monroe County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51320 .....	Morgan County, W Virginia .....	51	0.7900	0.9489	25180	50156	0.8695
51330 .....	Nicholas County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51340 .....	Ohio County, W Virginia .....	9000	0.7161	0.7161	48540	48540	0.7161
51350 .....	Pendleton County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51360 .....	Pleasants County, W Virginia .....	51	0.7900	0.8270	37620	50157	0.8085
51370 .....	Pocahontas County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51380 .....	Preston County, W Virginia .....	51	0.7900	0.8420	34060	34060	0.8160
51390 .....	Putnam County, W Virginia .....	1480	0.8445	0.8445	16620	50191	0.8445
51400 .....	Raleigh County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51410 .....	Randolph County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51420 .....	Ritchie County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51430 .....	Roane County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51440 .....	Summers County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51450 .....	Taylor County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51460 .....	Tucker County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51470 .....	Tyler County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51480 .....	Upshur County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51490 .....	Wayne County, W Virginia .....	3400	0.9477	0.9477	26580	26580	0.9477
51500 .....	Webster County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51510 .....	Wetzel County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
51520 .....	Wirt County, W Virginia .....	51	0.7900	0.8270	37620	50157	0.8085
51530 .....	Wood County, W Virginia .....	6020	0.8270	0.8270	37620	50297	0.8270
51540 .....	Wyoming County, W Virginia .....	51	0.7900	0.7717	99951	99951	0.7809
52000 .....	Adams County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52010 .....	Ashland County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52020 .....	Barron County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52030 .....	Bayfield County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52040 .....	Brown County, Wisconsin .....	3080	0.9483	0.9483	24580	50233	0.9483
52050 .....	Buffalo County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52060 .....	Burnett County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52070 .....	Calumet County, Wisconsin .....	0460	0.9239	0.9288	11540	11540	0.9264
52080 .....	Chippewa County, Wisconsin .....	2290	0.9201	0.9201	20740	20740	0.9201
52090 .....	Clark County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52100 .....	Columbia County, Wisconsin .....	52	0.9478	1.0659	31540	50160	1.0069
52110 .....	Crawford County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52120 .....	Dane County, Wisconsin .....	4720	1.0754	1.0659	31540	50274	1.0707
52130 .....	Dodge County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52140 .....	Door County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52150 .....	Douglas County, Wisconsin .....	2240	1.0213	1.0213	20260	50216	1.0213
52160 .....	Dunn County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52170 .....	Eau Claire County, Wisconsin .....	2290	0.9201	0.9201	20740	20740	0.9201
52180 .....	Florence County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52190 .....	Fond Du Lac County, Wisconsin .....	52	0.9478	0.9640	22540	22540	0.9559
52200 .....	Forest County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52210 .....	Grant County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52220 .....	Green County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
52230 .....	Green Lake County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52240 .....	Iowa County, Wisconsin .....	52	0.9478	1.0659	31540	50160	1.0069
52250 .....	Iron County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52260 .....	Jackson County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52270 .....	Jefferson County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52280 .....	Juneau County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52290 .....	Kenosha County, Wisconsin .....	3800	0.9760	1.0429	29404	50253	1.0095
52300 .....	Kewaunee County, Wisconsin .....	52	0.9478	0.9483	24580	50159	0.9481
52310 .....	La Crosse County, Wisconsin .....	3870	0.9564	0.9564	29100	29100	0.9564
52320 .....	Lafayette County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52330 .....	Langlade County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52340 .....	Lincoln County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52350 .....	Manitowoc County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52360 .....	Marathon County, Wisconsin .....	8940	0.9590	0.9590	48140	48140	0.9590
52370 .....	Marinette County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52380 .....	Marquette County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52381 .....	Menominee County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52390 .....	Milwaukee County, Wisconsin .....	5080	1.0146	1.0146	33340	33340	1.0146
52400 .....	Monroe County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52410 .....	Oconto County, Wisconsin .....	52	0.9478	0.9483	24580	50159	0.9481
52420 .....	Oneida County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52430 .....	Outagamie County, Wisconsin .....	0460	0.9239	0.9288	11540	11540	0.9264
52440 .....	Ozaukee County, Wisconsin .....	5080	1.0146	1.0146	33340	33340	1.0146
52450 .....	Pepin County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52460 .....	Pierce County, Wisconsin .....	5120	1.1075	1.1075	33460	33460	1.1075
52470 .....	Polk County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52480 .....	Portage County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52490 .....	Price County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52500 .....	Racine County, Wisconsin .....	6600	0.8997	0.8997	39540	39540	0.8997
52510 .....	Richland County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52520 .....	Rock County, Wisconsin .....	3620	0.9538	0.9538	27500	27500	0.9538
52530 .....	Rusk County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52540 .....	St Croix County, Wisconsin .....	5120	1.1075	1.1075	33460	33460	1.1075
52550 .....	Sauk County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52560 .....	Sawyer County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52570 .....	Shawano County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52580 .....	Sheboygan County, Wisconsin .....	7620	0.8911	0.8911	43100	43100	0.8911
52590 .....	Taylor County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52600 .....	Trempealeau County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52610 .....	Vernon County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52620 .....	Vilas County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52630 .....	Walworth County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52640 .....	Washburn County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52650 .....	Washington County, Wisconsin .....	5080	1.0146	1.0146	33340	33340	1.0146
52660 .....	Waukesha County, Wisconsin .....	5080	1.0146	1.0146	33340	33340	1.0146
52670 .....	Waupaca County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52680 .....	Waushara County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
52690 .....	Winnebago County, Wisconsin .....	0460	0.9239	0.9183	36780	36780	0.9211
52700 .....	Wood County, Wisconsin .....	52	0.9478	0.9509	99952	99952	0.9494
53000 .....	Albany County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53010 .....	Big Horn County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53020 .....	Campbell County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53030 .....	Carbon County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53040 .....	Converse County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53050 .....	Crook County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53060 .....	Fremont County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53070 .....	Goshen County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53080 .....	Hot Springs County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53090 .....	Johnson County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53100 .....	Laramie County, Wyoming .....	1580	0.8775	0.8775	16940	16940	0.8775
53110 .....	Lincoln County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53120 .....	Natrona County, Wyoming .....	1350	0.9026	0.9026	16220	16220	0.9026
53130 .....	Niobrara County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53140 .....	Park County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53150 .....	Platte County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53160 .....	Sheridan County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257

## ADDENDUM A.—CY 2006 HH PPS TRANSITION WAGE INDEX TABLE BY STATE AND COUNTY CODE—Continued

SSA State/ county code	County name	MSA No.	2006 MSA- based WI	2006 CBSA- based WI	CBSA No.	Number that goes on the claim in the CBSA field	Transi- tion wage index
53170 .....	Sublette County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53180 .....	Sweetwater County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53190 .....	Teton County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53200 .....	Uinta County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53210 .....	Washakie County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
53220 .....	Weston County, Wyoming .....	53	0.9257	0.9257	99953	99953	0.9257
65010 .....	Agana County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65020 .....	Agana Heights County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65030 .....	Agat County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65040 .....	Asan County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65050 .....	Barrigada County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65060 .....	Chalan Pago County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65070 .....	Dededo County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65080 .....	Inarajan County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65090 .....	Maite County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65100 .....	Mangilao County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65110 .....	Merizo County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65120 .....	Mongmong County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65130 .....	Ordot County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65140 .....	Piti County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65150 .....	Santa Rita County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65160 .....	Sinajana County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65170 .....	Talofofo County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65180 .....	Tamuning County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65190 .....	Toto County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65200 .....	Umatac County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65210 .....	Yigo County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611
65220 .....	Yona County, Guam .....	65	0.9611	0.9611	99965	99965	0.9611

ADDENDUM B.—CY 2005 HH PPS  
WAGE INDEX FOR RURAL AREAS BY  
CBSAADDENDUM B.—CY 2005 HH PPS  
WAGE INDEX FOR RURAL AREAS BY  
CBSA—ContinuedADDENDUM B.—CY 2005 HH PPS  
WAGE INDEX FOR RURAL AREAS BY  
CBSA—Continued

CBSA code No.	Nonurban area	Transition wage index	CBSA code No.	Nonurban area	Transition wage index	CBSA code No.	Nonurban area	Transition wage index
01 .....	Alabama*	*****	25 .....	Mississippi .....	0.7654	48 .....	Virgin Islands .....	0.7615
02 .....	Alaska .....	1.1933	26 .....	Missouri .....	0.7930	49 .....	Virginia*	*****
03 .....	Arizona*	*****	27 .....	Montana .....	0.8762	50 .....	Washington*	*****
04 .....	Arkansas .....	0.7605	28 .....	Nebraska .....	0.8657	51 .....	West Virginia .....	0.7809
05 .....	California .....	1.0915	29 .....	Nevada*	*****	52 .....	Wisconsin .....	0.9494
06 .....	Colorado .....	0.9380	30 .....	New Hampshire .....	1.0817	53 .....	Wyoming .....	0.9257
07 .....	Connecticut .....	1.1730	31 .....	New Jersey <sup>1</sup> .....	.....	65 .....	Guam .....	0.9611
08 .....	Delaware .....	0.9579	32 .....	New Mexico*	*****			
10 .....	Florida*	*****	33 .....	New York*	*****			
11 .....	Georgia*	*****	34 .....	North Carolina*	*****			
12 .....	Hawaii .....	1.0551	35 .....	North Dakota .....	0.7261			
13 .....	Idaho .....	0.8567	36 .....	Ohio*	*****			
14 .....	Illinois*	*****	37 .....	Oklahoma*	*****			
15 .....	Indiana*	*****	38 .....	Oregon .....	0.9939			
16 .....	Iowa .....	0.8552	39 .....	Pennsylvania*	*****			
17 .....	Kansas .....	0.8038	40 .....	Puerto Rico <sup>2</sup> .....	0.3826			
18 .....	Kentucky*	*****	41 .....	Rhode Island <sup>1</sup> .....	.....			
19 .....	Louisiana*	*****	42 .....	South Carolina*	*****			
20 .....	Maine .....	0.8843	43 .....	South Dakota .....	0.8556			
21 .....	Maryland .....	0.9292	44 .....	Tennessee*	*****			
22 .....	Massachusetts <sup>2</sup> .....	1.0216	45 .....	Texas*	*****			
23 .....	Michigan*	*****	46 .....	Utah*	*****			
24 .....	Minnesota .....	0.9132	47 .....	Vermont .....	0.9830			

\* Denotes that there is more than one wage index value for nonurban areas within the State. Specific codes to be used for processing claims and the applicable wage index values for these nonurban areas can be found in Addendum A. Addendum A lists the wage index by State County code.

<sup>1</sup> All counties within the State are classified as urban.

<sup>2</sup> Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2006. Because more recent data are not available, we are using last year's wage index values.

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
10180 .....	0.7914	Abilene, TX.	
		Callahan, Texas* .....	45
	0.7975	Jones, Texas* .....	45
		Taylor, Texas* .....	0040
10380 .....	0.4807	Aguadilla-Isabela-San Sebastián, PR.	
		Aguada, PR* .....	0060
		Aguadilla, PR* .....	0060
		Moca, PR* .....	0060
	0.4171	Isabela, PR* .....	40
		Lares, PR* .....	40
		Rincón, PR* .....	40
		San Sebastián, PR* .....	40
	0.4491	Anasco, PR* .....	4840
10420 .....	0.8982	Akron, OH.	
		Portage, OH .....	0080
		Summit, OH.	
10500 .....	0.8628	Albany, GA.	
		Dougherty, GA* .....	0120
	0.8397	Lee, GA* .....	0120
		Baker, GA* .....	11
		Terrell, GA* .....	11
		Worth, GA* .....	11
10580 .....	0.8574	Albany-Schenectady-Troy, NY .....	0160
		Albany, NY.	
		Rensselaer, NY.	
		Saratoga, NY.	
		Schenectady, NY.	
		Schoharie, NY.	
10740 .....	0.9684	Albuquerque, NM.	
		Bernalillo, NM* .....	0200
		Sandoval, NM* .....	0200
		Valencia, NM* .....	0200
	0.9124	Torrance, NM* .....	32
10780 .....		Alexandria, LA.	
	0.8033	Rapides, LA* .....	0220
	0.7687	Grant, LA* .....	19
10900 .....	0.9832	Allentown-Bethlehem-Easton, PA-NJ.	
		Carbon, PA* .....	0240
		Lehigh, PA* .....	0240
		Northampton, PA* .....	0240
	1.0826	Warren, NJ* .....	5640
11020 .....	0.8944	Altoona, PA .....	0280
		Blair, PA.	
11100 .....		Amarillo, TX.	
	0.9156	Potter, TX* .....	0320
		Randall, TX* .....	0320
	0.8544	Armstrong, TX* .....	45
		Carson, TX* .....	45
11180 .....	0.9065	Ames, IA .....	16
		Story, IA.	
11260 .....		Anchorage, AK.	
	1.1840	Anchorage, AK* .....	0380
	1.1892	Matanuska-Susitna, AK* .....	02
11300 .....	0.9226	Anderson, IN .....	3480
		Madison, IN.	
11340 .....	0.9306	Anderson, SC .....	3160
		Anderson, SC.	
11460 .....	1.0783	Ann Arbor, MI .....	0440
		Washtenaw, MI.	
11500 .....	0.7682	Anniston-Oxford, AL .....	0450
		Calhoun, AL.	
11540 .....	0.9264	Appleton, WI .....	0460
		Calumet, WI.	
		Outagamie, WI.	
11700 .....		Asheville, NC.	
	0.9511	Buncombe, NC* .....	0480
		Madison, NC* .....	0480
	0.8874	Haywood, NC* .....	34
		Henderson, NC* .....	34
12020 .....		Athens-Clarke County, GA.	
	0.9855	Clarke, GA* .....	0500

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
12060 .....	0.9011 .....	Madison, GA* .....	0500
		Oconee, GA* .....	0500
		Oglethorpe, GA* .....	11
	0.9793 .....	Atlanta-Sandy Springs-Marietta, GA.	
		Barrow, GA* .....	0520
		Bartow, GA* .....	0520
		Carroll, GA* .....	0520
		Cherokee, GA* .....	0520
		Clayton, GA* .....	0520
		Cobb, GA* .....	0520
		Coweta, GA* .....	0520
		De Kalb, GA* .....	0520
		Douglas, GA* .....	0520
		Fayette, GA* .....	0520
		Forsyth, GA* .....	0520
		Fulton, GA* .....	0520
		Gwinnett, GA* .....	0520
		Henry, GA* .....	0520
		Newton, GA* .....	0520
		Paulding, GA* .....	0520
		Pickens, GA* .....	0520
		Rockdale, GA* .....	0520
		Spalding, GA* .....	0520
		Walton, GA* .....	0520
	0.8980 .....	Butts, GA* .....	11
		Dawson, GA* .....	11
		Haralson, GA* .....	11
		Heard, GA* .....	11
		Jasper, GA* .....	11
		Lamar, GA* .....	11
		Meriwether, GA* .....	11
		Pike, GA* .....	11
12100 .....	1.1556 .....	Atlantic City, NJ .....	0560
		Atlantic, NJ.	
12220 .....	0.8100 .....	Auburn-Opelika, AL .....	0580
		Lee, AL.	
12260 .....	0.9778 .....	Augusta-Richmond County, GA-SC.	
		Aiken, SC* .....	0600
		Columbia, GA* .....	0600
		Edgefield, SC* .....	0600
		McDuffie, GA* .....	0600
		Richmond, GA* .....	0600
	0.8957 .....	Burke, GA* .....	11
12420 .....	0.9437 .....	Austin-Round Rock, TX .....	0640
		Bastrop, TX.	
		Caldwell, TX.	
		Hays, TX.	
		Travis, TX.	
		Williamson, TX.	
12540 .....	1.0470 .....	Bakersfield, CA .....	0680
		Kern, CA.	
12580 .....	0.9897 .....	Baltimore-Towson, MD .....	0720
		Anne Arundel, MD.	
		Baltimore, MD.	
		Baltimore City, MD.	
		Carroll, MD.	
		Harford, MD.	
		Howard, MD.	
		Queen Anne's, MD.	
12620 .....	0.9993 .....	Bangor, ME .....	0733
		Penobscot, ME.	
12700 .....	1.2600 .....	Barnstable Town, MA .....	0743
		Barnstable, MA.	
12940 .....	0.8618 .....	Baton Rouge, LA.	
		Ascension, LA* .....	0760
		East Baton Rouge Parish, LA* .....	0760
		Livingston, LA* .....	0760
		West Baton Rouge Parish, LA* .....	0760
	0.7967 .....	East Feliciana, LA* .....	19
		Iberville, LA* .....	19
		Pointe Coupee, LA* .....	19

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
		St. Helena, LA* .....	19
		West Feliciana, LA* .....	19
12980 .....	0.9826	Battle Creek, MI .....	3720
		Calhoun, MI .....	
13020 .....	0.9292	Bay City, MI .....	6960
		Bay, MI .....	
13140 .....	0.8412	Beaumont-Port Arthur, TX .....	0840
		Hardin, TX .....	
		Jefferson, TX .....	
		Orange, TX .....	
13380 .....	1.1731	Bellingham, WA .....	0860
		Whatcom, WA .....	
13460 .....	1.0419	Bend, OR .....	38
		Deschutes, OR .....	
13644 .....	1.1230	Bethesda-Gaithersburg-Frederick, MD .....	8840
		Frederick, MD .....	
		Montgomery, MD .....	
13740 .....		Billings, MT .....	
	0.8798	Carbon, MT* .....	27
	0.8834	Yellowstone, MT* .....	0880
13780 .....	0.8562	Binghamton, NY .....	0960
		Broome, NY .....	
		Tioga, NY .....	
13820 .....		Birmingham-Hoover, AL .....	
	0.8980	Blount, AL* .....	1000
		Jefferson, AL* .....	1000
		Shelby, AL* .....	1000
		St. Clair, AL* .....	1000
	0.8196	Bibb, AL* .....	01
		Chilton, AL* .....	01
		Walker, AL* .....	01
13900 .....	0.7574	Bismarck, ND .....	1010
		Burleigh, ND .....	
		Morton, ND .....	
13980 .....	0.8186	Blacksburg-Christiansburg-Radford, VA .....	49
		Giles, VA .....	
		Montgomery, VA .....	
		Pulaski, VA .....	
		Radford City, VA .....	
14020 .....		Bloomington, IN .....	
	0.8593	Greene, IN* .....	15
		Owen, IN* .....	15
	0.8447	Monroe, IN* .....	1020
14060 .....	0.9075	Bloomington-Normal, IL .....	1040
		McLean, IL .....	
14260 .....		Boise City-Nampa, ID .....	
	0.9052	Ada, ID* .....	1080
		Canyon, ID* .....	1080
	0.9075	Boise, ID* .....	13
		Gem, ID* .....	13
		Owyhee, ID* .....	13
14484 .....	1.1368	Boston-Quincy, MA .....	1123
		Norfolk, MA .....	
		Plymouth, MA .....	
		Suffolk, MA .....	
14500 .....	0.9734	Boulder, CO .....	1125
		Boulder, CO .....	
14540 .....	0.8035	Bowling Green, KY .....	18
		Edmonson, KY .....	
		Warren, KY .....	
14740 .....	1.0675	Bremerton-Silverdale, WA .....	1150
		Kitsap, WA .....	
14860 .....	1.2394	Bridgeport-Stamford-Norwalk, CT .....	5483
		Fairfield, CT .....	
15180 .....	0.9804	Brownsville-Harlingen, TX .....	1240
		Cameron, TX .....	
15260 .....	0.8739	Brunswick, GA .....	11
		Brantley, GA .....	
		Glynn, GA .....	
		McIntosh, GA .....	
15380 .....	0.9511	Buffalo-Niagara Falls, NY .....	1280

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
15500 .....	0.8962	Erie, NY. Niagara, NY. Burlington, NC .....	3120
15540 .....	0.9410	Alamance, NC. Burlington-South Burlington, VT .....	1303
15764 .....	1.1175	Chittenden, VT. Franklin, VT. Grand Isle, VT. Cambridge-Newton-Framingham, MA .....	1123
15804 .....	1.0720	Middlesex, MA. Camden, NJ .....	6160
15940 .....	0.8935	Burlington, NJ. Camden, NJ. Gloucester, NJ. Canton-Massillon, OH .....	1320
15980 .....	0.9356	Carroll, OH. Stark, OH. Cape Coral-Fort Myers, FL .....	2700
16180 .....	0.9961	Lee, FL. Carson City, NV .....	29
16220 .....	0.9026	Carson City, NV. Casper, WY .....	1350
16300 .....	0.8825	Natrona, WY. Cedar Rapids, IA. Linn, IA* .....	1360
16580 .....	0.8710	Benton, IA* .....	16
16580 .....	0.9594	Jones, IA* .....	16
16620 .....	0.8948	Champaign-Urbana, IL. Champaign, IL* .....	1400
16620 .....	0.8445	Ford, IL* .....	14
16700 .....	0.8173	Piatt, IL* .....	14
16700 .....	0.9245	Charleston, WV. Kanawha, WV* .....	1480
16740 .....	0.9733	Putnam, WV* .....	1480
16820 .....	0.9106	Boone, WV* .....	51
16820 .....	1.0187	Clay, WV* .....	51
16860 .....	0.9302	Lincoln, WV* .....	51
16940 .....	0.8512	Charleston-North Charleston, SC .....	1440
16974 .....	0.8775	Berkeley, SC. Charleston, SC. Dorchester, SC. Charlotte-Gastonia-Concord, NC-SC. Cabarrus, NC* .....	1520
	0.9088	Gaston, NC* .....	1520
		Mecklenburg, NC* .....	1520
		Union, NC* .....	1520
		York, SC* .....	1520
		Anson, NC* .....	34
		Charlottesville, VA. Albemarle, VA* .....	1540
		Charlottesville City, VA* .....	1540
		Fluvanna, VA* .....	1540
		Greene, VA* .....	1540
		Nelson, VA* .....	49
		Chattanooga, TN-GA. Catoosa, GA* .....	1560
		Dade, GA* .....	1560
		Hamilton, TN* .....	1560
		Marion, TN* .....	1560
		Walker, GA* .....	1560
		Sequatchie, TN* .....	44
		Cheyenne, WY .....	1580
		Laramie, WY. Chicago-Naperville-Joliet, IL .....	1600
		Cook, IL. De Kalb, IL. Du Page, IL. Grundy, IL. Kane, IL. Kendall, IL. McHenry, IL.	



## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
17020 .....	1.0511	Will, IL.	
		Chico, CA .....	1620
		Butte, CA.	
17140 .....	0.9675	Cincinnati-Middletown, OH-KY-IN.	
		Boone, KY* .....	1640
		Brown, OH* .....	1640
		Campbell, KY* .....	1640
		Clermont, OH* .....	1640
		Dearborn, IN* .....	1640
		Gallatin, KY* .....	1640
		Grant, KY* .....	1640
		Hamilton, OH* .....	1640
		Kenton, KY* .....	1640
		Ohio, IN* .....	1640
		Pendleton, KY* .....	1640
		Warren, OH* .....	1640
	0.9177	Franklin, IN* .....	15
	0.8737	Bracken, KY* .....	18
	0.9283	Butler, OH* .....	3200
17300 .....	0.8284	Clarksville, TN-KY.	
		Christian, KY* .....	1660
		Montgomery, TN* .....	1660
	0.8110	Stewart, TN* .....	44
	0.8071	Trigg, KY* .....	18
17420 .....	0.8037	Cleveland, TN .....	44
		Bradley, TN.	
		Polk, TN.	
17460 .....	0.9198	Cleveland-Elyria-Mentor, OH .....	1680
		Cuyahoga, OH.	
		Geauga, OH.	
		Lake, OH.	
		Lorain, OH.	
		Medina, OH.	
17660 .....	0.9372	Coeur d'Alene, ID .....	13
		Kootenai, ID.	
17780 .....	0.8900	College Station-Bryan, TX.	
	0.8416	Brazos, TX* .....	1260
		Burleson, TX* .....	45
		Robertson, TX* .....	45
17820 .....	0.9468	Colorado Springs, CO.	
	0.9424	El Paso, CO* .....	1720
		Teller, CO* .....	06
17860 .....	0.8345	Columbia, MO.	
	0.8152	Boone, MO* .....	1740
		Howard, MO* .....	26
17900 .....	0.9070	Columbia, SC.	
		Lexington, SC* .....	1760
		Richland, SC* .....	1760
	0.8844	Calhoun, SC* .....	42
		Fairfield, SC* .....	42
		Kershaw, SC* .....	42
		Saluda, SC* .....	42
17980 .....	0.8560	Columbus, GA-AL.	
		Chattahoochee, GA* .....	1800
		Harris, GA* .....	1800
		Muscogee, GA* .....	1800
		Russell, AL .....	1800
	0.8363	Marion, GA* .....	11
18020 .....	0.9164	Columbus, IN .....	15
		Bartholomew, IN.	
18140 .....	0.9867	Columbus, OH.	
		Delaware, OH* .....	1840
		Fairfield, OH* .....	1840
		Franklin, OH* .....	1840
		Licking, OH* .....	1840
		Madison, OH* .....	1840
		Pickaway, OH* .....	1840
	0.9391	Morrow, OH* .....	36
		Union, OH* .....	36
18580 .....	0.8550	Corpus Christi, TX.	
		Nueces, TX* .....	1880

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
		San Patricio, TX* .....	1880
	0.8241	Aransas, TX* .....	45
18700 .....	1.0729	Corvallis, OR .....	1890
		Benton, OR .....	
19060 .....	0.9317	Cumberland, MD-WV .....	1900
		Allegany, MD .....	
		Mineral, WV .....	
19124 .....		Dallas-Plano-Irving, TX .....	
	1.0217	Collin, TX* .....	
		Dallas, TX* .....	1920
		Denton, TX* .....	1920
		Ellis, TX* .....	1920
		Hunt, TX* .....	1920
		Kaufman, TX* .....	1920
		Rockwall, TX* .....	1920
	0.9080	Delta, TX* .....	45
19140 .....	0.8623	Dalton, GA .....	11
		Murray, GA .....	
		Whitfield, GA .....	
19180 .....	0.8665	Danville, IL .....	14
		Vermilion, IL .....	
19260 .....	0.8489	Danville, VA .....	1950
		Danville City, VA .....	
		Pittsylvania, VA .....	
19340 .....		Davenport-Moline-Rock Island, IA-IL .....	
	0.8724	Henry, IL* .....	1960
		Rock Island, IL* .....	1960
		Scott, IA* .....	1960
	0.8513	Mercer, IL* .....	14
19380 .....		Dayton, OH .....	
	0.9022	Greene, OH* .....	2000
		Miami, OH* .....	2000
		Montgomery, OH* .....	2000
	0.8993	Preble, OH* .....	36
19460 .....	0.8469	Decatur, AL .....	2030
		Lawrence, AL .....	
		Morgan, AL .....	
19500 .....	0.8067	Decatur, IL .....	2040
		Macon, IL .....	
19660 .....	0.9312	Deltona-Daytona Beach-Ormond Beach, FL .....	2020
		Volusia, FL .....	
19740 .....		Denver-Aurora, CO .....	
	1.0723	Adams, CO* .....	2080
		Arapahoe, CO* .....	2080
		Broomfield, CO* .....	2080
		Denver, CO* .....	2080
		Douglas, CO* .....	2080
		Jefferson, CO* .....	2080
	1.0052	Clear Creek, CO* .....	06
		Elbert, CO* .....	06
		Gilpin, CO* .....	06
		Park, CO* .....	06
19780 .....		Des Moines, IA* .....	
	0.9669	Dallas, IA* .....	2120
		Polk, IA* .....	2120
		Warren, IA* .....	2120
	0.9132	Guthrie, IA* .....	16
		Madison, IA* .....	16
19804 .....	1.0286	Detroit-Livonia-Dearborn, MI .....	2160
		Wayne, MI .....	
20020 .....		Dothan, AL .....	
	0.7577	Geneva, AL* .....	01
		Henry, AL* .....	01
	0.7711	Houston, AL* .....	2180
20100 .....	0.9776	Dover, DE .....	2190
		Kent, DE .....	
20220 .....	0.9024	Dubuque, IA .....	2200
		Dubuque, IA .....	
20260 .....		Duluth, MN-WI .....	
	1.0213	Douglas, WI* .....	2240
		St. Louis, MN* .....	2240

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
20500 .....	0.9673	Carlton, MN* .....	24
	1.0139	Durham, NC. ....	
		Chatham, NC* .....	6640
		Durham, NC* .....	6640
20740 .....	0.9353	Orange, NC* .....	6640
	0.9201	Person, NC* .....	34
		Eau Claire, WI .....	2290
		Chippewa, WI. ....	
20764 .....	1.1208	Eau Claire, WI. ....	
		Edison, NJ. ....	
	1.1255	Middlesex, NJ* .....	5015
		Somerset, NJ* .....	5015
20940 .....	0.9841	Monmouth, NJ* .....	5190
		Ocean, NJ* .....	5190
	0.8330	El Centro, CA .....	05
		Imperial, CA. ....	
21060 .....	0.8330	Elizabethtown, KY .....	18
		Hardin, KY. ....	
		Larue, KY. ....	
	0.9627	Elkhart-Goshen, IN .....	2330
21140 .....	0.8250	Elkhart, IN. ....	
		Elmira, NY .....	2335
	0.8977	Chemung, NY. ....	
		El Paso, TX .....	2320
21300 .....	0.8737	El Paso, TX. ....	
		Erie, PA .....	2360
	1.0858	Erie, PA. ....	
		Essex County, MA .....	1123
21604 .....	1.0818	Essex, MA. ....	
		Eugene-Springfield, OR .....	2400
	0.8726	Lane, OR. ....	
		Evansville, IN-KY. ....	
21780 .....	0.8713	Gibson, IN* .....	15
		Henderson, KY* .....	2440
	0.8286	Posey, IN* .....	2440
		Vanderburgh, IN* .....	2440
21820 .....	1.1648	Warrick, IN* .....	2440
		Webster, KY* .....	18
	0.4453	Fairbanks, AK .....	02
		Fairbanks North Star, AK. ....	
21940 .....	0.8486	Fajardo, PR .....	7440
		Ceiba, PR. ....	
	0.8536a	Fajardo, PR. ....	
		Luquillo, PR. ....	
22020 .....	0.8536a	Fargo, ND-MN .....	2520
		Cass, ND. ....	
	0.9416	Clay, MN. ....	
		Farmington, NM .....	32
22140 .....	0.8939	San Juan, NM. ....	
		Fayetteville, NC. ....	
	0.8272	Cumberland, NC* .....	2560
		Hoke, NC* .....	34
22180 .....	0.8661	Fayetteville-Springdale-Rogers, AR-MO. ....	
		Benton, AR* .....	2580
	0.8203	Washington, AR* .....	2580
		Madison, AR* .....	04
22220 .....	0.8310	McDonald, MO* .....	26
		Flagstaff, AZ .....	2620
	1.0655	Coconino, AZ. ....	
		Flint, MI .....	2640
22380 .....	0.8789	Genesee, MI. ....	
		Florence, SC. ....	
	0.8995	Darlington, SC* .....	42
		Florence, SC* .....	2655
22420 .....	0.9559	Florence-Muscle Shoals, AL .....	2650
		Colbert, AL. ....	
	1.0122	Lauderdale, AL. ....	
		Fond Du Lac, WI .....	52
22500 .....	0.8272	Fond Du Lac, WI. ....	
		Fort Collins-Loveland, CO .....	2670
	0.9559	Larimer, CO. ....	

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
22744 .....	1.0432	Ft Lauderdale-Pompano Beach-Deerfield Beach, FL .....	2860
22900 .....	0.8238	Broward, FL. Fort Smith, AR-OK. Crawford, AR* .....	2720
		Sebastian, AR* .....	2720
	0.7987	Sequoyah, OK* .....	2720
	0.7836	Franklin, AR* .....	04
23020 .....	0.8872	Le Flore, OK* .....	37
23060 .....	0.9750	Fort Walton Beach-Crestview-Destin, FL .....	2750
		Okaloosa, FL.	
		Fort Wayne, IN .....	2760
		Allen, IN.	
		Wells, IN.	
		Whitley, IN.	
23104 .....	0.9504	Fort Worth-Arlington, TX. Johnson, TX* .....	2800
		Parker, TX* .....	2800
		Tarrant, TX* .....	2800
	0.8709	Wise, TX* .....	45
23420 .....	1.0483	Fresno, CA .....	2840
		Fresno, CA.	
23460 .....	0.7938	Gadsden, AL .....	2880
		Etowah, AL.	
23540 .....	0.9388	Gainesville, FL.	
	0.9033	Alachua, FL* .....	2900
	0.8520	Gilchrist, FL* .....	10
23580 .....		Gainesville, GA .....	11
		Hall, GA.	
23844 .....	0.9395	Gary, IN.	
		Lake, IN* .....	2960
	0.9067	Porter, IN* .....	2960
		Jasper, IN* .....	15
		Newton, IN* .....	15
24020 .....	0.8559	Glens Falls, NY .....	2975
		Warren, NY.	
		Washington, NY.	
24140 .....	0.8775	Goldsboro, NC .....	2980
		Wayne, NC.	
24220 .....	0.7901	Grand Forks, ND-MN .....	2985
		Grand Forks, ND.	
		Polk, MN.	
24300 .....	0.9550	Grand Junction, CO .....	2995
		Mesa, CO.	
24340 .....	0.9418	Grand Rapids-Wyoming, MI.	
	0.9107	Kent, MI* .....	3000
		Barry, MI* .....	23
		Ionia, MI* .....	23
		Newaygo, MI* .....	23
24500 .....	0.9052	Great Falls, MT .....	3040
		Cascade, MT.	
24540 .....	0.9570	Greeley, CO .....	3060
		Weld, CO.	
24580 .....	0.9483	Green Bay, WI.	
	0.9481	Brown, WI* .....	3080
		Kewaunee, WI* .....	52
		Oconto, WI* .....	52
24660 .....	0.9061	Greensboro-High Point, NC.	
		Guilford, NC* .....	3120
		Randolph, NC* .....	3120
	0.8783	Rockingham, NC* .....	34
24780 .....		Greenville, NC.	
	0.9425	Pitt, NC* .....	3150
	0.8944	Greene, NC* .....	34
24860 .....	0.9821	Greenville, SC.	
		Greenville, SC* .....	3160
		Pickens, SC* .....	3160
	0.9329	Laurens, SC* .....	42
25020 .....	0.3393	Guayama, PR.	
		Arroyo, PR .....	40
		Guayama, PR.	
		Patillas, PR.	

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
25060 .....	.....	Gulfport-Biloxi, MS.	
	0.8818	Hancock, MS* .....	0920
		Harrison, MS* .....	0920
	0.8282	Stone, MS* .....	25
25180 .....	.....	Hagerstown-Martinsburg, MD-WV.	
	0.9679	Washington, MD* .....	3180
	0.8695	Morgan, WV* .....	51
	1.0233	Berkeley, WV* .....	8840
25260 .....	1.0406	Hanford-Corcoran, CA.	
		Kings, CA .....	05
25420 .....	0.9273	Harrisburg-Carlisle, PA.	
		Cumberland, PA .....	3240
		Dauphin, PA.	
		Perry, PA.	
25500 .....	0.8753	Harrisonburg, VA.	
		Harrisonburg City, VA .....	49
		Rockingham, VA.	
25540 .....	1.1073	Hartford-West Hartford-East Hartford, CT.	
		Hartford, CT .....	3283
		Litchfield, CT.	
		Middlesex, CT.	
		Tolland, CT.	
25620 .....	.....	Hattiesburg, MS.	
	0.7601	Forrest, MS* .....	3285
		Lamar, MS* .....	3285
	0.7618	Perry, MS* .....	25
25860 .....	0.8921	Hickory-Lenoir-Morganton, NC.	
		Alexander, NC .....	3290
		Burke, NC.	
		Caldwell, NC.	
		Catawba, NC.	
25980 .....	0.8973	Hinesville-Fort Stewart, GA.	
		Liberty, GA .....	11
		Long, GA.	
26100 .....	0.9250	Holland-Grand Haven, MI.	
		Ottawa, MI .....	3000
26180 .....	1.1214	Honolulu, HI.	
		Honolulu, HI .....	3320
26300 .....	0.8375	Hot Springs, AR.	
		Garland, AR .....	04
26380 .....	0.7894	Houma-Bayou Cane-Thibodaux, LA.	
		Lafourche, LA .....	3350
		Terrebonne, LA.	
26420 .....	.....	Houston-Sugar Land-Baytown, TX.	
	1.0044	Chambers, TX* .....	3360
		Fort Bend, TX* .....	3360
		Harris, TX* .....	3360
		Liberty, TX* .....	3360
		Montgomery, TX* .....	3360
		Waller, TX* .....	3360
	0.8964	Austin, TX* .....	45
		San Jacinto, TX* .....	45
	0.9280	Brazoria, TX* .....	1145
	0.9816	Galveston, TX* .....	2920
26580 .....	0.9477	Huntington-Ashland, WV-KY-OH.	
		Boyd, KY .....	3400
		Cabell, WV.	
		Greenup, KY.	
		Lawrence, OH.	
		Wayne, WV.	
26620 .....	0.9146	Huntsville, AL.	
		Limestone, AL .....	3440
		Madison, AL.	
26820 .....	0.9259	Idaho Falls, ID.	
		Bonneville, ID .....	13
		Jefferson, ID.	
26900 .....	.....	Indianapolis, IN.	
	0.9893	Boone, IN* .....	3480
		Hamilton, IN* .....	3480
		Hancock, IN* .....	3480
		Hendricks, IN* .....	3480

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
		Johnson, IN* .....	3480
		Marion, IN* .....	3480
		Morgan, IN* .....	3480
		Shelby, IN* .....	3480
	0.9330	Brown, IN* .....	15
		Putnam, IN* .....	15
26980 .....		Iowa City, IA. ....	
	0.9747	Johnson, IA* .....	3500
	0.9171	Washington, IA* .....	16
27060 .....	0.9094	Ithaca, NY. ....	
		Tompkins, NY .....	33
27100 .....	0.9304	Jackson, MI. ....	
		Jackson, MI .....	3520
27140 .....		Jackson, MS. ....	
	0.8347	Hinds, MS* .....	3560
		Madison, MS* .....	3560
		Rankin, MS* .....	3560
	0.7973	Copiah, MS* .....	25
		Simpson, MS* .....	25
27180 .....	0.8964	Jackson, TN. ....	
		Chester, TN .....	3580
		Madison, TN. ....	
27260 .....		Jacksonville, FL. ....	
	0.9295	Clay, FL* .....	3600
		Duval, FL* .....	3600
		Nassau, FL* .....	3600
		St. Johns, FL* .....	3600
	0.8984	Baker, FL* .....	10
27340 .....	0.8236	Jacksonville, NC. ....	
		Onslow, NC .....	3605
27500 .....	0.9538	Janesville, WI. ....	
		Rock, WI .....	3620
27620 .....	0.8173	Jefferson City, MO. ....	
		Callaway, MO .....	26
		Cole, MO. ....	
		Moniteau, MO. ....	
		Osage, MO. ....	
27740 .....	0.7972	Johnson City, TN. ....	
		Carter, TN .....	3660
		Unicoi, TN. ....	
		Washington, TN. ....	
27780 .....	0.8220	Johnstown, PA. ....	
		Cambria, PA .....	3680
27860 .....		Craighead, AR*. ....	
	0.7911	Jonesboro, AR .....	3700
	0.7828	Poinsett, AR* .....	04
27900 .....	0.8582	Joplin, MO. ....	
		Jasper, MO .....	3710
		Newton, MO. ....	
28020 .....	1.0262	Kalamazoo-Portage, MI. ....	
		Kalamazoo, MI .....	3720
		Van Buren, MI. ....	
28100 .....	1.0721	Kankakee-Bradley, IL. ....	
		Kankakee, IL .....	3740
28140 .....		Kansas City, MO-KS. ....	
	0.9483	Cass, MO* .....	3760
		Clay, MO* .....	3760
		Clinton, MO* .....	3760
		Jackson, MO* .....	3760
		Johnson, KS* .....	3760
		Lafayette, MO* .....	3760
		Leavenworth, KS* .....	3760
		Miami, KS* .....	3760
		Platte, MO* .....	3760
		Ray, MO* .....	3760
		Wyandotte, KS* .....	3760
	0.8758	Franklin, KS* .....	17
		Linn, KS* .....	17
	0.8718	Bates, MO* .....	26
		Caldwell, MO* .....	26
28420 .....	1.0619	Kennewick-Richland-Pasco, WA. ....	

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
		Benton, WA .....	6740
		Franklin, WA .....	
28660 .....	0.8526	Killeen-Temple-Fort Hood, TX.	
		Bell, TX* .....	3810
		Coryell, TX* .....	3810
	0.8229	Lampasas, TX* .....	45
28700 .....	0.8031	Kingsport-Bristol-Bristol, TN-VA .....	3660
		Bristol City, VA.	
		Hawkins, TN.	
		Scott, VA.	
		Sullivan, TN.	
		Washington, VA.	
28740 .....	0.8825	Kingston, NY.	
		Ulster, NY .....	33
28940 .....	0.8419	Knoxville, TN.	
		Anderson, TN .....	3840
		Blount, TN.	
		Knox, TN.	
		Loudon, TN.	
		Union, TN.	
29020 .....	0.9508	Kokomo, IN.	
		Howard, IN .....	3850
		Tipton, IN.	
29100 .....	0.9564	La Crosse, WI-MN.	
		Houston, MN .....	3870
		La Crosse, WI.	
29140 .....	0.8738	Lafayette, IN.	
		Benton, IN* .....	15
		Carroll, IN* .....	15
	0.8736	Tippecanoe, IN* .....	3920
29180 .....	0.8340	Lafayette, LA.	
		Lafayette, LA .....	3880
		St. Martin, LA.	
29340 .....		Lake Charles, LA.	
	0.7846	Calcasieu, LA* .....	3960
	0.7587	Cameron, LA* .....	19
29404 .....		Lake County-Kenosha County, IL-WI.	
	1.0606	Lake, IL* .....	1600
	1.0095	Kenosha, WI* .....	3800
29460 .....	0.8912	Lakeland, FL.	
		Polk, FL .....	3980
29540 .....	0.9694	Lancaster, PA.	
		Lancaster, PA .....	4000
29620 .....	0.9794	Lansing-East Lansing, MI.	
		Clinton, MI .....	4040
		Eaton, MI.	
		Ingham, MI.	
29700 .....	0.8068	Laredo, TX.	
		Webb, TX .....	4080
29740 .....	0.8467	Las Cruces, NM.	
		Dona Ana, NM .....	4100
29820 .....	1.1296	Las Vegas-Paradise, NV.	
		Clark, NV .....	4120
29940 .....	0.8537	Lawrence, KS.	
		Douglas, KS .....	4150
30020 .....	0.7872	Lawton, OK.	
		Comanche, OK .....	4200
30140 .....	0.8846	Lebanon, PA.	
		Lebanon, PA .....	3240
30300 .....		Lewiston, ID-WA.	
	0.9492	Nez Perce, ID* .....	13
	1.0052	Asotin, WA* .....	50
30340 .....	0.9331	Lewiston-Auburn, ME .....	4243
		Androscoggin, ME.	
30460 .....	0.9032	Lexington-Fayette, KY.	
		Bourbon, KY .....	4280
		Clark, KY.	
		Fayette, KY.	
		Jessamine, KY.	
		Scott, KY.	
		Woodford, KY.	

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
30620 .....	0.9172	Lima, OH.	
30700 .....		Allen, OH .....	4320
	1.0214	Lincoln, NE.	
	0.9436	Lancaster, NE* .....	4360
30780 .....		Seward, NE* .....	28
	0.8747	Little Rock-North Little Rock, AR.	
		Faulkner, AR* .....	4400
		Lonoke, AR* .....	4400
		Pulaski, AR* .....	4400
		Saline, AR* .....	4400
	0.8246	Grant, AR* .....	04
		Perry, AR* .....	04
30860 .....		Logan, UT-ID.	
	0.8963	Cache, UT* .....	46
	0.9131	Franklin, ID* .....	13
30980 .....		Longview, TX.	
	0.8809	Gregg, TX* .....	4420
		Upshur, TX* .....	4420
	0.8331	Rusk, TX* .....	45
31020 .....	0.9898	Longview, WA .....	50
		Cowlitz, WA.	
31084 .....	1.1783	Los Angeles-Long Beach-Santa Ana, CA .....	4480
		Los Angeles, CA.	
31140 .....		Louisville, KY-IN.	
	0.9272	Bullitt, KY* .....	4520
		Clark, IN* .....	4520
		Floyd, IN* .....	4520
		Harrison, IN* .....	4520
		Jefferson, KY* .....	4520
		Oldham, KY* .....	4520
	0.8995	Washington, IN* .....	15
	0.8555	Henry, KY* .....	18
		Meade, KY* .....	18
		Nelson, KY* .....	18
		Shelby, KY* .....	18
		Spencer, KY* .....	18
		Trimble, KY* .....	18
31180 .....		Lubbock, TX.	
	0.8783	Lubbock, TX* .....	4600
	0.8357	Crosby, TX** .....	45
31340 .....		Lynchburg, VA.	
	0.8691	Amherst, VA* .....	4640
		Bedford, VA* .....	4640
		Bedford City, VA* .....	4640
		Campbell, VA* .....	4640
		Lynchburg City, VA* .....	4640
	0.8554	Appomattox, VA* .....	49
31420 .....		Macon, GA.	
	0.9360	Bibb, GA* .....	4680
		Jones, GA* .....	4680
		Twiggs, GA* .....	4680
	0.8805	Crawford, GA* .....	11
		Monroe, GA* .....	11
31460 .....	0.9571	Madera, CA .....	2840
		Madera, CA.	
31540 .....		Madison, WI.	
	1.0707	Dane, WI* .....	4720
	1.0069	Columbia, WI* .....	52
		Iowa, WI* .....	52
31700 .....	1.0766	Manchester-Nashua, NH.	
		Hillsborough, NH .....	1123
		Merrimack, NH.	
31900 .....	0.9891	Mansfield, OH.	
		Richland, OH .....	4800
32420 .....	0.4132	Mayaguez, PR.	
		Hormigueros, PR .....	4840
		Mayaguez, PR.	
32580 .....	0.8934	McAllen-Edinburg-Mission, TX.	
		Hidalgo, TX .....	4880
32780 .....	1.0225	Medford, OR.	
		Jackson, OR .....	4890



## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
32820 .....	0.9407	Memphis, TN-MS-AR.	
		Crittenden, AR* .....	4920
		DeSoto, MS* .....	4920
		Fayette, TN* .....	4920
		Shelby, TN* .....	4920
		Tipton, TN* .....	4920
	0.8516	Marshall, MS* .....	25
		Tate, MS* .....	25
		Tunica, MS* .....	25
32900 .....	1.1109	Merced, CA.	
		Merced, CA .....	4940
33124 .....	0.9750	Miami-Miami Beach-Kendall, FL.	
		Miami-Dade, FL .....	5000
33140 .....	0.9069	Michigan City-La Porte, IN.	
		La Porte, IN .....	15
33260 .....	0.9628	Midland, TX.	
		Midland, TX .....	5800
33340 .....	1.0146	Milwaukee-Waukesha-West Allis, WI.	
		Milwaukee, WI .....	5080
		Ozaukee, WI.	
		Washington, WI.	
		Waukesha, WI.	
33460 .....	1.1075	Minneapolis-St. Paul-Bloomington, MN-WI.	
		Anoka, MN .....	5120
		Carver, MN.	
		Chisago, MN.	
		Dakota, MN.	
		Hennepin, MN.	
		Isanti, MN.	
		Pierce, WI.	
		Ramsey, MN.	
		Scott, MN.	
		Sherburne, MN.	
		St. Croix, WI.	
		Washington, MN.	
		Wright, MN.	
33540 .....	0.9473	Missoula, MT.	
		Missoula, MT .....	5140
33660 .....	0.7876	Mobile, AL.	
		Mobile, AL .....	5160
33700 .....	1.1885	Modesto, CA.	
		Stanislaus, CA .....	5170
33740 .....		Monroe, LA.	
	0.8038	Ouachita, LA* .....	5200
	0.7686	Union, LA* .....	19
33780 .....	0.9808	Monroe, MI.	
		Monroe, MI .....	2160
33860 .....		Montgomery, AL.	
	0.8618	Autauga, AL* .....	5240
		Elmore, AL* .....	5240
		Montgomery, AL* .....	5240
	0.8025	Lowndes, AL* .....	01
34060 .....	0.8160	Morgantown, WV.	
		Monongalia, WV .....	51
		Preston, WV.	
34100 .....	0.7948	Morristown, TN.	
		Grainger, TN .....	44
		Hamblen, TN.	
		Jefferson, TN.	
34580 .....	1.0336	Mount Vernon-Anacortes, WA.	
		Skagit, WA .....	50
34620 .....	0.8930	Muncie, IN.	
		Delaware, IN .....	5280
34740 .....	0.9555	Muskegon-Norton Shores, MI.	
		Muskegon, MI .....	3000
34820 .....	0.8934	Myrtle Beach-Conway-North Myrtle Beach, SC.	
		Horry, SC .....	5330
34900 .....	1.3313	Napa, CA.	
		Napa, CA .....	8720
34940 .....	1.0139	Naples-Marco Island, FL.	
		Collier, FL .....	5345

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
34980 .....	0.9799	Nashville-Davidson-Murfreesboro, TN. Cheatham, TN* .....	5360
		Davidson, TN* .....	5360
		Dickson, TN* .....	5360
		Robertson, TN* .....	5360
		Rutherford, TN* .....	5360
		Sumner, TN* .....	5360
		Williamson, TN* .....	5360
		Wilson, TN* .....	5360
	0.8863	Cannon, TN* .....	44
		Hickman, TN* .....	44
		Macon, TN* .....	44
		Smith, TN* .....	44
		Trousdale, TN* .....	44
35004 .....	1.2719	Nassau-Suffolk, NY. Nassau, NY .....	5380
		Suffolk, NY .....	
35084 .....	1.1545	Newark-Union, NJ-PA. Pike, PA* .....	5660
	1.1859	Essex, NJ* .....	5640
		Morris, NJ* .....	5640
		Sussex, NJ* .....	5640
		Union, NJ* .....	5640
	1.1525	Hunterdon, NJ* .....	5015
35300 .....	1.2042	New Haven-Milford, CT. New Haven, CT .....	5483
35380 .....	0.8995	New Orleans-Metairie-Kenner, LA. Jefferson, LA .....	5560
		Orleans, LA .....	
		Plaquemines, LA .....	
		St. Bernard, LA .....	
		St. Charles, LA .....	
		St. John Baptist, LA .....	
		St. Tammany, LA .....	
35644 .....	1.3326	New York-White Plains-Wayne, NY-NJ. Bronx, NY* .....	5600
		Kings, NY* .....	5600
		New York, NY* .....	5600
		Putnam, NY* .....	5600
		Queens, NY* .....	5600
		Richmond, NY* .....	5600
		Rockland, NY* .....	5600
		Westchester, NY* .....	5600
	1.2420	Bergen, NJ* .....	0875
		Passaic, NJ* .....	0875
	1.2263	Hudson, NJ* .....	3640
35660 .....	0.8879	Niles-Benton Harbor, MI .....	0870
		Berrien, MI .....	
35980 .....	1.1345	Norwich-New London, CT. New London, CT .....	5523
36084 .....	1.5346	Oakland-Fremont-Hayward, CA .....	5775
		Alameda, CA .....	
		Contra Costa, CA .....	
36100 .....	0.8925	Ocala, FL. Marion, FL .....	5790
36140 .....	1.1254	Ocean City, NJ. Cape May, NJ .....	0560
36220 .....	0.9813	Odessa, TX. Ector, TX .....	5800
36260 .....		Ogden-Clearfield, UT. Davis, UT* .....	7160
	0.9185	Weber, UT* .....	7160
	0.8896	Morgan, UT* .....	46
36420 .....	0.9028	Oklahoma City, OK. Canadian, OK* .....	5880
		Cleveland, OK* .....	5880
		Logan, OK* .....	5880
		McClain, OK* .....	5880
		Oklahoma, OK* .....	5880
	0.8237	Grady, OK* .....	37
		Lincoln, OK* .....	37

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
36500 .....	1.0927	Olympia, WA .....	5910
		Thurston, WA .....	
36540 .....	0.9560	Omaha-Council Bluffs, NE-IA.	
		Cass, NE* .....	5920
		Douglas, NE* .....	5920
		Pottawattamie, IA* .....	5920
		Sarpy, NE* .....	5920
		Washington, NE* .....	5920
	0.9077	Harrison, IA* .....	16
		Mills, IA* .....	16
	0.9109	Saunders, NE* .....	28
36740 .....	0.9464	Orlando-Kissimmee, FL.	
		Lake, FL .....	5960
		Orange, FL .....	
		Osceola, FL .....	
		Seminole, FL .....	
36780 .....	0.9211	Oshkosh-Neenah, WI.	
		Winnebago, WI .....	0460
36980 .....		Owensboro, KY.	
	0.8780	Daviess, KY* .....	5990
	0.8319	Hancock, KY* .....	18
		Mc Lean, KY* .....	18
37100 .....	1.1622	Oxnard-Thousand Oaks-Ventura, CA.	
		Ventura, CA .....	8735
37340 .....	0.9839	Palm Bay-Melbourne-Titusville, FL.	
		Brevard, FL .....	4900
37460 .....	0.8005	Panama City-Lynn Haven, FL.	
		Bay, FL .....	6015
37620 .....		Parkersburg-Marietta-Vienna, WV-OH.	
	0.8085	Pleasants, WV* .....	51
		Wirt, WV* .....	51
	0.8270	Washington, OH* .....	6020
		Wood, WV* .....	6020
37700 .....		Pascagoula, MS.	
	0.7895	George, MS* .....	25
	0.8431	Jackson, MS* .....	0920
37860 .....	0.8096	Pensacola-Ferry Pass-Brent, FL .....	6080
		Escambia, FL .....	
		Santa Rosa, FL .....	
37900 .....		Peoria, IL.	
	0.8870	Peoria, IL* .....	6120
		Tazewell, IL* .....	6120
		Woodford, IL* .....	6120
	0.8586	Marshall, IL* .....	14
		Stark, IL* .....	14
37964 .....	1.0980	Philadelphia, PA .....	6160
		Bucks, PA .....	
		Chester, PA .....	
		Delaware, PA .....	
		Montgomery, PA .....	
		Philadelphia, PA .....	
38060 .....	1.0127	Phoenix-Mesa-Scottsdale, AZ .....	6200
		Maricopa, AZ .....	
		Pinal, AZ .....	
38220 .....		Pine Bluff, AR.	
	0.8680	Jefferson, AR* .....	6240
	0.8212	Cleveland, AR* .....	04
		Lincoln, AR* .....	04
38300 .....		Pittsburgh, PA.	
	0.8853	Allegheny, PA* .....	6280
		Beaver, PA* .....	6280
		Butler, PA* .....	6280
		Fayette, PA* .....	6280
		Washington, PA* .....	6280
		Westmoreland, PA* .....	6280
	0.8582	Armstrong, PA* .....	39
38340 .....	1.0181	Pittsfield, MA .....	6323
		Berkshire, MA .....	
38540 .....		Pocatello, ID.	
	0.9351	Bannock, ID* .....	6340
	0.9224	Power, ID* .....	13

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
38660 .....	0.4910	Ponce, PR .....	6360
		Juana Diaz, PR.	
		Ponce, PR.	
		Villalba, PR.	
38860 .....	1.0382	Portland-South Portland-Biddeford, ME .....	6403
		Cumberland, ME.	
		Sagadahoc, ME.	
		York, ME.	
38900 .....	1.1266	Portland-Vancouver-Beaverton, OR-WA.	
		Clackamas, OR* .....	6440
		Clark, WA* .....	6440
		Columbia, OR* .....	6440
		Multnomah, OR* .....	6440
		Washington, OR* .....	6440
		Yamhill, OR* .....	6440
	1.0742	Skamania, WA* .....	50
38940 .....	1.0123	Port St. Lucie-Fort Pierce, FL .....	2710
		Martin, FL.	
		St. Lucie, FL.	
39100 .....		Poughkeepsie-Newburgh-Middletown, NY.	
	1.0683	Dutchess, NY* .....	2281
	1.1049	Orange, NY* .....	5660
39140 .....	0.9457	Prescott, AZ .....	03
		Yavapai, AZ.	
39300 .....		Providence-New Bedford-Fall River, RI-MA.	
	1.1072	Bristol, MA* .....	1123
	1.1012	Bristol, RI* .....	6483
		Kent, RI* .....	6483
		Newport, RI* .....	6483
		Providence, RI* .....	6483
		Washington, RI* .....	6483
39340 .....		Provo-Orem, UT.	
	0.9500	Utah, UT* .....	6520
	0.9131	Juab, UT* .....	46
39380 .....	0.8623	Pueblo, CO .....	6560
		Pueblo, CO.	
39460 .....	0.9255	Punta Gorda, FL .....	6580
		Charlotte, FL.	
39540 .....	0.8997	Racine, WI .....	6600
		Racine, WI.	
39580 .....	0.9863	Raleigh-Cary, NC .....	6640
		Franklin, NC.	
		Johnston, NC.	
		Wake, NC.	
39660 .....		Rapid City, SD.	
	0.8987	Pennington, SD* .....	6660
	0.8769	Meade, SD* .....	43
39740 .....	0.9686	Reading, PA .....	6680
		Berks, PA.	
39820 .....	1.2203	Redding, CA .....	6690
		Shasta, CA.	
39900 .....		Reno-Sparks, NV.	
	1.0982	Washoe, NV* .....	6720
	1.0335	Storey, NV* .....	29
40060 .....		Richmond, VA.	
	0.9328	Charles City, VA* .....	6760
		Chesterfield, VA* .....	6760
		Colonial Heights City, VA* .....	6760
		Dinwiddie, VA* .....	6760
		Goochland, VA* .....	6760
		Hanover, VA* .....	6760
		Henrico, VA* .....	6760
		Hopewell City, VA* .....	6760
		New Kent, VA* .....	6760
		Petersburg City, VA* .....	6760
		Powhatan, VA* .....	6760
		Prince George, VA* .....	6760
		Richmond City, VA* .....	6760
	0.8873	Amelia, VA* .....	49
		Caroline, VA* .....	49
		Cumberland, VA* .....	49

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
		King and Queen, VA* .....	49
		King William, VA* .....	49
		Louisa, VA* .....	49
		Sussex, VA* .....	49
40140 .....	1.1027	Riverside-San Bernardino-Ontario, CA .....	6780
		Riverside, CA.	
		San Bernardino, CA.	
40220 .....	0.8396	Roanoke, VA.	
		Craig, VA* .....	49
		Franklin, VA* .....	49
	0.8381	Botetourt, VA* .....	6800
		Roanoke, VA* .....	6800
		Roanoke City, VA* .....	6800
		Salem City, VA* .....	6800
40340 .....		Rochester, MN.	
	1.1131	Olmsted, MN* .....	6820
	1.0132	Dodge, MN* .....	24
		Wabasha, MN* .....	24
40380 .....	0.9085	Rochester, NY .....	6840
		Livingston, NY.	
		Monroe, NY.	
		Ontario, NY.	
		Orleans, NY.	
		Wayne, NY.	
40420 .....	0.9984	Rockford, IL .....	6880
		Boone, IL.	
		Winnebago, IL.	
40484 .....	1.0776	Rockingham County, NH .....	1123
		Rockingham, NH.	
		Strafford, NH.	
40580 .....	0.8915	Rocky Mount, NC .....	6895
		Edgecombe, NC.	
		Nash, NC.	
40660 .....	0.8790	Rome, GA .....	11
		Floyd, GA.	
40900 .....		Sacramento--Arden-Arcade--Roseville, CA.	
	1.3056	El Dorado, CA* .....	6920
		Placer, CA* .....	6920
		Sacramento, CA* .....	6920
	1.1460	Yolo, CA* .....	9270
40980 .....	0.9165	Saginaw-Saginaw Township North, MI .....	6960
		Saginaw, MI.	
41060 .....	0.9965	St. Cloud, MN .....	6980
		Benton, MN.	
		Stearns, MN.	
41100 .....	0.9077	St. George, UT .....	46
		Washington, UT.	
41140 .....		St. Joseph, MO-KS.	
	0.9519	Andrew, MO* .....	7000
		Buchanan, MO* .....	7000
	0.8780	Doniphan, KS* .....	17
	0.8739	De Kalb, MO* .....	26
41180 .....		St. Louis, MO-IL.	
	0.8958	Clinton, IL* .....	7040
		Franklin, MO* .....	7040
		Jefferson, MO* .....	7040
		Jersey, IL* .....	7040
		Lincoln, MO* .....	7040
		Madison, IL* .....	7040
		Monroe, IL* .....	7040
		St. Charles, MO* .....	7040
		St. Clair, IL* .....	7040
		St. Louis, MO* .....	7040
		St. Louis City, MO* .....	7040
		Warren, MO* .....	7040
	0.8628	Bond, IL* .....	14
		Calhoun, IL* .....	14
		Macoupin, IL* .....	14
	0.8457	Crawford, MO* .....	26
		Washington, MO* .....	26
41420 .....	1.0442	Salem, OR .....	7080

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
41500 .....	1.4128	Marion, OR. Polk, OR. Salinas, CA .....	7120
41540 .....	0.9147	Monterey, CA. Salisbury, MD .....	21
41620 .....	0.9381	Somerset, MD. Wicomico, MD. Salt Lake City, UT. Salt Lake, UT* .....	7160
41660 .....	0.9092	Summit, UT* .....	46
41700 .....	0.8101	Tooele, UT* .....	46
41700 .....	0.8271	San Angelo, TX. Irion, TX* .....	45
41700 .....	0.8982	Tom Green, TX* .....	7200
41740 .....	1.1413	San Antonio, TX. Bexar, TX* .....	7240
41780 .....	0.8970	Comal, TX* .....	7240
41884 .....	1.4994	Guadalupe, TX* .....	7240
41900 .....	0.8456	Wilson, TX* .....	7240
41900 .....	0.4127	Atascosa, TX* .....	45
41940 .....	0.4447	Bandera, TX* .....	45
41940 .....	1.5109	Kendall, TX* .....	45
41980 .....	1.2937	Medina, TX* .....	45
41980 .....	0.4687	San Diego-Carlsbad-San Marcos, CA .....	7320
41980 .....	0.4113	San Diego, CA. Sandusky, OH .....	36
41980 .....	0.4113	Erie, OH. San Francisco-San Mateo-Redwood City, CA .....	7360
41980 .....	0.4113	Marin, CA. San Francisco, CA. San Mateo, CA. San Germán-Cabo Rojo, PR. Lajas, PR* .....	40
41980 .....	0.4113	Cabo Rojo, PR* .....	4840
41980 .....	0.4113	Sabana Grande, PR* .....	4840
41980 .....	0.4113	San Germán, PR* .....	4840
41980 .....	0.4113	San Jose-Sunnyvale-Santa Clara, CA. Santa Clara, CA* .....	7400
41980 .....	0.4113	San Benito, CA* .....	05
41980 .....	0.4113	San Juan-Caguas-Guaynabo, PR. Aguas Buenas, PR* .....	7440
41980 .....	0.4113	Barceloneta, PR* .....	7440
41980 .....	0.4113	Bayamón, PR* .....	7440
41980 .....	0.4113	Cañovanas, PR* .....	7440
41980 .....	0.4113	Carolina, PR* .....	7440
41980 .....	0.4113	Catão, PR* .....	7440
41980 .....	0.4113	Comerio, PR* .....	7440
41980 .....	0.4113	Corozal, PR* .....	7440
41980 .....	0.4113	Dorado, PR* .....	7440
41980 .....	0.4113	Florida, PR* .....	7440
41980 .....	0.4113	Guaynabo, PR* .....	7440
41980 .....	0.4113	Humacao, PR* .....	7440
41980 .....	0.4113	Juncos, PR* .....	7440
41980 .....	0.4113	Las Piedras, PR* .....	7440
41980 .....	0.4113	Loiza, PR* .....	7440
41980 .....	0.4113	Maguabo, PR* .....	7440
41980 .....	0.4113	Manati, PR* .....	7440
41980 .....	0.4113	Morovis, PR* .....	7440
41980 .....	0.4113	Naranjito, PR* .....	7440
41980 .....	0.4113	Rio Grande, PR* .....	7440
41980 .....	0.4113	San Juan, PR* .....	7440
41980 .....	0.4113	Toa Alta, PR* .....	7440
41980 .....	0.4113	Toa Baja, PR* .....	7440
41980 .....	0.4113	Trujillo Alto, PR* .....	7440
41980 .....	0.4113	Vega Alta, PR* .....	7440
41980 .....	0.4113	Vega Baja, PR* .....	7440
41980 .....	0.4113	Yabucoa, PR* .....	7440
41980 .....	0.4113	Aibonito, PR* .....	40
41980 .....	0.4113	Barranquitas, PR* .....	40
41980 .....	0.4113	Ciales, PR* .....	40
41980 .....	0.4113	Maunabo, PR* .....	40

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
		Orocovs, PR* .....	40
		Quebradillas, PR* .....	40
	0.4367	Arecibo, PR* .....	0470
		Camuy, PR* .....	0470
		Hatillo, PR* .....	0470
	0.4371	Caguas, PR* .....	1310
		Cayey, PR* .....	1310
		Cidra, PR* .....	1310
		Gurabo, PR* .....	1310
		San Lorenzo, PR* .....	1310
42020 .....	1.1349	San Luis Obispo-Paso Robles, CA .....	7460
		San Luis Obispo, CA.	
42044 .....	1.1559	Santa Ana-Anaheim-Irvine, CA .....	5945
		Orange, CA.	
42060 .....	1.1694	Santa Barbara-Santa Maria, CA .....	7480
		Santa Barbara, CA.	
42100 .....	1.5166	Santa Cruz-Watsonville, CA .....	7485
		Santa Cruz, CA.	
42140 .....	1.0834	Santa Fe, NM .....	7490
		Santa Fe, NM.	
42220 .....	1.3493	Santa Rosa-Petaluma, CA .....	7500
		Sonoma, CA.	
42260 .....	0.9639	Sarasota-Bradenton-Venice, FL .....	7510
		Manatee, FL.	
		Sarasota, FL.	
42340 .....	0.9461	Savannah, GA .....	7520
		Bryan, GA.	
		Chatham, GA.	
		Effingham, GA.	
42540 .....	0.8532	Scranton-Wilkes-Barre, PA .....	7560
		Lackawanna, PA.	
		Luzerne, PA.	
		Wyoming, PA.	
42644 .....	1.1572	Seattle-Bellevue-Everett, WA .....	7600
		King, WA.	
		Snohomish, WA.	
43100 .....	0.8911	Sheboygan, WI .....	7620
		Sheboygan, WI.	
43300 .....	0.9507	Sherman-Denison, TX .....	7640
		Grayson, TX.	
43340 .....		Shreveport-Bossier City, LA.	
	0.8749	Bossier, LA* .....	7680
		Caddo, LA* .....	7680
	0.8050	De Soto, LA* .....	19
43580 .....		Sioux City, IA-NE-SD.	
	0.9019	Dixon, NE* .....	28
	0.9399	Dakota, NE* .....	7720
		Woodbury, IA* .....	7720
	0.8966	Union, SD* .....	43
43620 .....		Sioux Falls, SD.	
	0.9635	Lincoln, SD* .....	7760
		Minnehaha, SD* .....	7760
	0.9093	McCook, SD* .....	43
		Turner, SD* .....	43
43780 .....		South Bend-Mishawaka, IN-MI.	
	0.9788	St. Joseph, IN* .....	7800
	0.9306	Cass, MI* .....	23
43900 .....	0.9394	Spartanburg, SC .....	3160
		Spartanburg, SC.	
44060 .....	1.0905	Spokane, WA .....	7840
		Spokane, WA.	
44100 .....	0.8792	Springfield, IL .....	7880
		Menard, IL.	
		Sangamon, IL.	
44140 .....		Springfield, MA.	
	1.0232	Franklin, MA* .....	22
	1.0256	Hampden, MA* .....	8003
		Hampshire, MA* .....	8003
44180 .....		Springfield, MO.	
	0.8244	Christian, MO* .....	7920
		Greene, MO* .....	7920

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
	0.8098	Webster, MO* .....	7920
		Dallas, MO* .....	26
		Polk, MO* .....	26
44220 .....	0.8688	Springfield, OH .....	2000
		Clark, OH .....	
44300 .....	0.8356	State College, PA .....	8050
		Centre, PA .....	
44700 .....	1.1307	Stockton, CA .....	8120
		San Joaquin, CA .....	
44940 .....	0.8377	Sumter, SC .....	8140
		Sumter, SC .....	
45060 .....	0.9533	Syracuse, NY .....	8160
		Madison, NY .....	
		Onondaga, NY .....	
		Oswego, NY .....	
45104 .....	1.0742	Tacoma, WA .....	8200
		Pierce, WA .....	
45220 .....		Tallahassee, FL .....	
	0.8688	Gadsden, FL* .....	8240
		Leon, FL* .....	8240
	0.8683	Wakulla, FL* .....	10
		Jefferson, FL* .....	10
45300 .....	0.9233	Tampa-St. Petersburg-Clearwater, FL .....	8280
		Hernando, FL .....	
		Hillsborough, FL .....	
		Pasco, FL .....	
		Pinellas, FL .....	
45460 .....		Terre Haute, IN .....	
	0.8321	Clay, IN* .....	8320
		Vermillion, IN* .....	8320
		Vigo, IN* .....	8320
	0.8522	Sullivan, IN* .....	15
45500 .....	0.8283	Texarkana, TX-Texarkana, AR .....	8360
		Bowie, TX .....	
		Miller, AR .....	
45780 .....		Toledo, OH .....	
	0.9574	Fulton, OH* .....	8400
		Lucas, OH* .....	8400
		Wood, OH* .....	8400
	0.9248	Ottawa, OH* .....	36
45820 .....		Topeka, KS .....	
	0.8920	Shawnee, KS* .....	8440
	0.8480	Jackson, KS* .....	17
		Jefferson, KS* .....	17
		Osage, KS* .....	17
		Wabaunsee, KS* .....	17
45940 .....	1.0834	Trenton-Ewing, NJ .....	8480
		Mercer, NJ .....	
46060 .....	0.9007	Tucson, AZ .....	8520
		Pima County, AZ .....	
46140 .....		Tulsa, OK .....	
	0.8565	Creek, OK* .....	8560
		Osage, OK* .....	8560
		Rogers, OK* .....	8560
		Tulsa, OK* .....	8560
		Wagoner, OK* .....	8560
	0.7993	Okmulgee, OK* .....	37
		Pawnee, OK* .....	37
46220 .....		Tuscaloosa, AL .....	
	0.8705	Tuscaloosa, AL* .....	8600
	0.8039	Greene, AL* .....	01
		Hale, AL* .....	01
46340 .....	0.9168	Tyler, TX .....	8640
		Smith, TX .....	
46540 .....	0.8358	Utica-Rome, NY .....	8680
		Herkimer, NY .....	
		Oneida, NY .....	
46660 .....	0.8516	Valdosta, GA .....	11
		Brooks, GA .....	
		Echols, GA .....	
		Lanier, GA .....	



## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
46700 .....	1.4460	Lowndes, GA. Vallejo-Fairfield, CA .....	8720
46940 .....	0.9056	Solano, CA. Vero Beach, FL .....	10
47020 .....	0.8160	Indian River, FL. Victoria, TX. Victoria, TX* .....	8750
	0.8046	Calhoun, TX* .....	45
47220 .....	0.9827	Goliad, TX* .....	45
47260 .....	0.8799	Vineland-Millville-Bridgeton, NJ .....	8760
		Cumberland, NJ. Virginia Beach-Norfolk-Newport News, VA. Chesapeake City, VA* .....	5720
		Currituck, NC* .....	5720
		Gloucester, VA* .....	5720
		Hampton City, VA* .....	5720
		Isle of Wight, VA* .....	5720
		James City, VA* .....	5720
		Mathews, VA* .....	5720
		Newport News City, VA* .....	5720
		Norfolk City, VA* .....	5720
		Poquoson, VA* .....	5720
		Portsmouth City, VA* .....	5720
		Suffolk City, VA* .....	5720
		Virginia Beach City, VA* .....	5720
		Williamsburg City, VA* .....	5720
		York, VA* .....	5720
47300 .....	0.8608	Surry, VA* .....	49
	1.0123	Visalia-Porterville, CA .....	8780
47380 .....	0.8518	Tulare, CA. Waco, TX .....	8800
47580 .....	0.8961	McLennan, TX. Warner Robins, GA .....	4680
47644 .....	1.0009	Houston, GA. Warren-Farmington-Hills-Troy, MI. Lapeer, MI* .....	2160
		Macomb, MI* .....	2160
		Oakland, MI* .....	2160
		St. Clair, MI* .....	2160
	1.0289	Livingston, MI* .....	0440
47894 .....	1.0951	Washington-Arlington-Alexandria, DC-VA-MD-WV .....	8840
		Alexandria City, VA. Arlington, VA. Calvert, MD. Charles, MD. Clarke, VA. Fairfax, VA. Fairfax City, VA. Falls Church City, VA. Fauquier, VA. Fredericksburg City, VA. Jefferson, WV. Loudoun, VA. Manassas City, VA. Manassas Park city, VA. Prince Georges, MD. Prince William, VA. Spotsylvania, VA. Stafford, VA. District of Columbia, DC. Warren, VA.	
47940 .....	0.8557	Waterloo-Cedar Falls, IA. Black Hawk, IA* .....	8920
	0.8576	Bremer, IA* .....	16
48140 .....	0.9590	Grundy, IA* .....	16
48260 .....	0.7819	Wausau, WI .....	8940
		Marathon, WI. Weirton-Staubenville, WV-OH .....	8080
		Brooke, WV. Hancock, WV. Jefferson, OH.	

## ADDENDUM C.—CY 2006 HH PPS WAGE INDEX FOR URBAN AREAS BY CBSA—Continued

CBSA code	Transition wage index	Urban area (constituent counties or county equivalents)	MSA code
48300 .....	1.0144	Wenatchee, WA .....	50
		Chelan, WA. ....	
		Douglas, WA. ....	
48424 .....	1.0067	West Palm Beach-Boca Raton-Boynton FL .....	8960
		Palm Beach, FL. ....	
48540 .....	0.7161	Wheeling, WV-OH .....	9000
		Belmont, OH. ....	
		Marshall, WV. ....	
		Ohio, WV. ....	
48620 .....	0.9164	Wichita, KS. ....	
		Butler, KS* .....	9040
		Harvey, KS* .....	9040
		Sedgwick, KS* .....	9040
	0.8597	Sumner, KS* .....	17
48660 .....	8325	Wichita Falls, TX. ....	
		Archer, TX* .....	9080
		Wichita, TX* .....	9080
	0.8108	Clay, TX* .....	45
48700 .....	0.8364	Williamsport, PA .....	9140
		Lycoming, PA. ....	
48864 .....	1.0499	Wilmington, DE-MD-NJ. ....	
		Cecil, MD* .....	9160
		New Castle, DE* .....	9160
	1.0697	Salem, NJ* .....	6160
48900 .....	0.9582	Wilmington, NC. ....	
		Brunswick, NC* .....	9200
		New Hanover, NC* .....	9200
	0.9022	Pender, NC* .....	34
49020 .....	0.9316	Winchester, VA-WV. ....	
		Frederick, VA* .....	49
		Winchester City, VA* .....	49
	0.9057	Hampshire, WV* .....	51
49180 .....	0.8981	Winston-Salem, NC .....	3120
		Davie, NC. ....	
		Forsyth, NC. ....	
		Stokes, NC. ....	
		Yadkin, NC. ....	
49340 .....	1.1103	Worcester, MA .....	1123
		Worcester, MA. ....	
49420 .....	1.0155	Yakima, WA .....	9260
		Yakima, WA. ....	
49500 .....	0.4006	Yauco, PR. ....	
	0.4645	Gúanica, PR* .....	40
		Guayanilla, PR* .....	6360
		Pēñuelas, PR* .....	6360
		Yauco, PR* .....	6360
49620 .....	0.9347	York-Hanover, PA .....	9280
		York, PA. ....	
49660 .....	0.8726	Youngstown-Warren-Boardman, OH-PA. ....	
		Mahoning, OH* .....	9320
		Trumbull, OH* .....	9320
	0.8198	Mercer, PA* .....	7610
49700 .....	1.0921	Yuba City, CA .....	9340
		Sutter, CA. ....	
		Yuba, CA. ....	
49740 .....	0.9126	Yuma, AZ .....	9360
		Yuma, AZ. ....	

\* Wage index values for these counties have a designated code to be used for claims processing purposes. These codes are listed to Addendum A of this regulation.

<sup>1</sup> This column lists each CBSA area name and each county or county equivalent, in the CBSA area. Counties not listed in this Table are considered to be rural areas.



# Federal Register

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**Wednesday,  
November 9, 2005**

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## **Part III**

## **Environmental Protection Agency**

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### **40 CFR Part 51**

**Revision to the Guideline on Air Quality  
Models: Adoption of a Preferred General  
Purpose (Flat and Complex Terrain)  
Dispersion Model and Other Revisions;  
Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 51**

[AH-FRL-7990-9]

RIN 2060-AK60

**Revision to the Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA's *Guideline on Air Quality Models* ("Guideline") addresses the regulatory application of air quality models for assessing criteria pollutants under the Clean Air Act. In today's action we promulgate several additions and changes to the *Guideline*. We recommend a new dispersion model—AERMOD—for adoption in appendix A of the *Guideline*. AERMOD replaces the Industrial Source Complex (ISC3) model, applies to complex terrain, and incorporates a new downwash algorithm—PRIME. We remove an existing model—the Emissions Dispersion Modeling System (EDMS)—from appendix A. We also make various editorial changes to update and reorganize information.

**DATES:** This rule is effective December 9, 2005. As proposed, beginning November 9, 2006, the new model—AERMOD—*should be used* for appropriate application as replacement for ISC3. During the one-year period following this promulgation, protocols for modeling analyses based on ISC3 which are submitted in a timely manner *may be approved* at the discretion of the appropriate Reviewing Authority. Applicants are therefore encouraged to consult with the Reviewing Authority as soon as possible to assure acceptance during this period.

**ADDRESSES:** All documents relevant to this rule have been placed in Docket No. A-99-05 at the following address: Air Docket in the EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC 20004. This docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the address above.

**FOR FURTHER INFORMATION CONTACT:** Tyler J. Fox, Air Quality Modeling Group (MD-D243-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711;

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**SUPPLEMENTARY INFORMATION:****Outline**

- I. General Information
- II. Background
- III. Public Hearing on the April 2000 proposal
- IV. Discussion of Public Comments and Issues from our April 21, 2000 Proposal
  - A. AERMOD and PRIME
  - B. Appropriate for Proposed Use
  - C. Implementation Issues/Additional Guidance
  - D. AERMOD revision and reanalyses in 2003
    - 1. Performance analysis for AERMOD (02222)
      - a. Non-downwash cases: AERMOD (99351) vs. AERMOD (02222)
      - b. Downwash cases
    - 2. Analysis of regulatory design concentrations for AERMOD (02222)
      - a. Non-downwash cases
      - b. Downwash cases
      - c. Complex terrain
    - E. Emission and Dispersion Modeling System (EDMS)
  - V. Discussion of Public Comments and Issues from our September 8, 2003 Notice of Data Availability
  - VI. Final action
  - VII. Final editorial changes to appendix W
  - VIII. Statutory and Executive Order Reviews

**I. General Information****A. How Can I Get Copies of Related Information?**

EPA established an official public docket for this action under Docket No. A-99-05. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC 20004. The EPA Docket Center Public Reading Room (B102) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. An electronic image of this docket may be accessed via Internet at [www.epa.gov/eDocket](http://www.epa.gov/eDocket), where Docket No. A-99-05 is indexed as OAR-2003-0201. Materials related to our Notice of Data Availability (published September 8, 2003) and public comments received pursuant to the notice were placed in eDocket OAR-2003-0201.<sup>1</sup>

Our Air Quality Modeling Group maintain an Internet website (Support Center for Regulatory Air Models—

<sup>1</sup> [http://cascade.epa.gov/RightSite/dk\\_public\\_collection\\_detail.htm?ObjectType=dk\\_docket\\_collection&cid=OAR-2003-0201&ShowList=items&Action=view](http://cascade.epa.gov/RightSite/dk_public_collection_detail.htm?ObjectType=dk_docket_collection&cid=OAR-2003-0201&ShowList=items&Action=view).

SCRAM) at: [www.epa.gov/scram001](http://www.epa.gov/scram001). You may find codes and documentation for models referenced in today's action on the SCRAM Web site. We have also uploaded various support documents (e.g., evaluation reports).

**II. Background**

The *Guideline* is used by EPA, States, and industry to prepare and review new source permits and State Implementation Plan revisions. The *Guideline* is intended to ensure consistent air quality analyses for activities regulated at 40 CFR 51.112, 51.117, 51.150, 51.160, 51.166, and 52.21. We originally published the *Guideline* in April 1978 and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration (PSD) of Air Quality in June 1978. We revised the *Guideline* in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the *Guideline* as appendix W to 40 CFR part 51 when we issued supplement B. We republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs. On April 21, 2000 we issued a Notice of Proposed Rulemaking (NPR) in the **Federal Register** (65 FR 21506), which was the original proposal for today's promulgation.

**III. Public Hearing on the April 2000 Proposal**

We held the 7th Conference on Air Quality Modeling (7th conference) in Washington, DC on June 28–29, 2000. As required by Section 320 of the Clean Air Act, these conferences take place approximately every three years to standardize modeling procedures, with special attention given to appropriate modeling practices for carrying out programs PSD (42 U.S.C. 7620). This conference served as the forum for receiving public comments on the *Guideline* revisions proposed in April 2000. The 7th conference featured presentations in several key modeling areas that support the revisions promulgated today. A presentation by the American Meteorological Society (AMS)/EPA Regulatory Model Improvement Committee (AERMIC) covered the enhanced Gaussian dispersion model with boundary layer parameterization: AERMOD.<sup>2</sup> Also at the 7th conference, the Electric Power Research Institute (EPRI) presented evaluation results from the recent research efforts to better define and characterize dispersion around

<sup>2</sup> AMS/EPA Regulatory Model.

buildings (downwash effects). These efforts were part of a program called the Plume Rise Model Enhancements (PRIME). At the time, PRIME was integrated within ISC3ST (*ISC-PRIME*) and the results presented were within the ISC3 context. As discussed in today's rule, the PRIME algorithm has now been fully integrated into AERMOD.

We proposed an update to the Emissions and Dispersion Modeling System (EDMS 3.1), which is used for assessing air quality impacts from airports. A representative of the Federal Aviation Administration (FAA) presented a further upgrade to EDMS 4.0 that would include AERMOD and forthcoming performance evaluations for two airports.

The presentations were followed by a critical review/discussion of AERMOD and available performance evaluations, facilitated jointly by the Air & Waste Management Association's AB-3 Committee and the American Meteorological Society's Committee of Meteorological Aspects of Air Pollution.

For the new models and modeling techniques proposed in April 2000, we asked the public to address the following questions:

- Has the scientific merit of the models presented been established?
- Are the models' accuracy sufficiently documented?
- Are the proposed regulatory uses of individual models for specific applications appropriate and reasonable?
- Do significant implementation issues remain or is additional guidance needed?
- Are there serious resource constraints imposed by modeling systems presented?
- What additional analyses or information are needed?

We placed a transcript of the 7th conference proceedings and a copy of all written comments, many of which address the above questions, in Docket No. A-99-05. The comments on AERMOD were reviewed and nearly every commenter urged us to integrate aerodynamic downwash into AERMOD (i.e., not to require two models for some analyses). The only comments calling for further actions were associated with the need for documentation, evaluation and review of the suggested downwash enhancement to AERMOD.

As a result of American Meteorological Society (AMS)/EPA Regulatory Model Improvement Committee's (AERMIC) efforts to revise AERMOD, incorporating the PRIME algorithm and making certain other incidental modifications and to respond

to public concerns, we believed that the revised AERMOD merited another public examination of performance results. Also, since the April 2000 NPR, the Federal Aviation Administration (FAA) decided to configure EDMS 3.1 to incorporate the AERMOD dispersion model. FAA presented this strategy at the 7th conference and performance evaluations at two airports were to be available before final promulgation. This was in response to public concern over lack of EDMS evaluation.

On April 15, 2003 we published a Notice of Final Rulemaking (NFR; 68 FR 18440) that adopted CALPUFF in appendix A of the *Guideline*. We also made various editorial changes to update and reorganize information, and removed obsolete models. We announced that action on AERMOD and the Emissions and Dispersion Model (EDMS) for assessing airport impacts was being deferred, and would be reconsidered in a separate action when new information became available for these models.

This deferred action took the form of a Notice of Data Availability (NDA), which was published on September 8, 2003 (68 FR 52934). In this notice, we made clear that the purpose of the NDA was to furnish pertinent technical details related to model changes since the April 2000 NPR. New performance data and evaluation of design concentration using the revised AERMOD are contained in reports cited later in this *preamble* (see section V). In our April 2003 NFR, we stated that results of EDMS 4.0 performance (with AERMOD) had recently become available. In the NDA we clarified that these results would not be provided because of FAA's decision to withdraw EDMS from the *Guideline's* appendix A, and we affirmed our support for this removal. We solicited public comments on the new data and information related to AERMOD.

#### IV. Discussion of Public Comments and Issues From Our April 21, 2000 Proposal

All comments submitted to Docket No. A-99-05 are filed in Category IV-D.<sup>3</sup> We summarized these comments, developed detailed responses, and documented conclusions on appropriate actions in a Response-to-Comments document.<sup>4</sup> In this document, we

<sup>3</sup> Additional comments received since we published the final rule on April 15, 2003 (discussed in the previous section) are filed in category IV-E. This category includes comments received pursuant to the Notice of Data Availability we published in September 2003.

<sup>4</sup> Summary of Public Comments and EPA Responses: AERMOD; 7th Conference on Air

considered and discussed all significant comments. Whenever the comments revealed any new information or suggested any alternative solutions, we considered this prior to taking final action.

The remainder of this preamble section discusses the primary issues encountered by the Agency during the public comment period associated with the April 2000 proposal. This overview also serves in part to explain the changes to the *Guideline* in today's action, and the main technical and policy concerns addressed by the Agency.

#### A. AERMOD and PRIME

AERMOD is a best state-of-the-practice Gaussian plume dispersion model whose formulation is based on planetary boundary layer principles. AERMOD provides better characterization of plume dispersion than does ISC3. At the 7th conference, AERMIC members presented developmental and evaluation results of AERMOD. Comprehensive comments were submitted on the AERMOD code and formulation document and on the AERMET draft User's Guide (AERMET is the meteorological preprocessor for AERMOD).

As identified in the April 2000 **Federal Register** proposal, applications for which AERMOD was suited include assessment of plume impacts from stationary sources in simple, intermediate, and complex terrain, for *other than* downwash and deposition applications. We invited comments on whether technical concerns had been reasonably addressed and whether AERMOD is appropriate for its intended applications. Since AERMOD lacks a general (all-terrain) screening tool, we invited comment on the practicality of using SCREEN3 as an interim tool for AERMOD. We also sought comments on minor changes to the list of acceptable screening techniques for complex terrain.

PRIME was designed to incorporate the latest scientific algorithms for evaluating building downwash. At the time of the proposal, the PRIME algorithm for simulating aerodynamic downwash was not incorporated into AERMOD. For testing purposes, PRIME was implemented within ISC3ST (short-term average version of the Industrial Source Complex), which AERMOD was proposed to replace. This special model, called *ISC-PRIME*, was proposed for

Quality Modeling; Washington, DC, June 28-29, 2000 AND Notice of Data Availability—September 8, 2003 (Air Docket A-99-05, Item V-C-2). This document may also be examined from EPA's SCRAM Web site at [www.epa.gov/scram001](http://www.epa.gov/scram001).

aerodynamic downwash and dry deposition. We sought comment on the technical viability of AERMOD and ISC-PRIME for its intended applications.

*Scientific merit and accuracy.* Regarding the scientific merits of AERMOD, substantial support was expressed in public comments that AERMOD represents sound and significant advances over ISC3ST. The scientific merits of this approach have been documented both through scientific peer review and performance evaluations. The formulation of AERMOD has been subjected to an extensive, independent peer review.<sup>5</sup> Findings of the peer review panel suggest that AERMOD's scientific basis is "state-of-the-science." Additionally, the model formulations used in AERMOD and the performance evaluations have been accepted for publication in two refereed journals.<sup>6,7</sup> Finally, the adequacy of AERMOD's complex terrain approach for regulatory applications is seen most directly in its performance. AERMOD's complex terrain component has been evaluated extensively by comparing model-estimated regulatory design values and concentration frequency distributions with observations. These comparisons have demonstrated AERMOD's superiority to ISC3ST and CTDMPPLUS (Complex Terrain Dispersion Model PLUS unstable algorithms) in estimating those flat and complex terrain impacts of greatest regulatory importance.<sup>8</sup> For incidental and unique situations involving a well-defined hill or ridge and where a detailed dispersion analysis of the spatial pattern of plume impacts is of interest, CTDMPPLUS in the *Guideline's* appendix A remains available.

Public comments also supported our conclusion about the scientific merits of PRIME. A detailed article in a peer-reviewed journal has been published which contains all the basic equations with clear definitions of the variables,

and the reasoning and references for the model assumptions.<sup>9</sup>

Although some comments asked for more detailed documentation and review, there were no comments which questioned the technical credibility of the PRIME model. In fact, almost every commenter asked for PRIME to be incorporated into AERMOD. As summarized above, we believe that the scientific merit of PRIME has been established via (1) model evaluation and documentation, (2) peer review within the submittal process to a technical journal, and (3) via the public review process.

Based on the external peer review of the evaluation report and the public review comments, we have concluded that: (1) AERMOD's accuracy is adequately documented; (2) AERMOD's accuracy is an improvement over ISC3ST's ability to predict measured concentrations; and (3) AERMOD is an acceptable regulatory air dispersion model replacement for ISC3ST.

Some commenters have identified what they perceived to be weaknesses in the evaluation and performance of ISC-PRIME,<sup>10</sup> and some concerns were raised about the scope of the PRIME evaluation. However, as shown by the overwhelming number of requests for the incorporation of PRIME into AERMOD, commenters were convinced that the accuracy of PRIME, as implemented within the ISC3ST framework, was reasonably documented and found acceptable for regulatory applications. Although some commenters requested more evaluations, practical limitations on the number of valid, available data sets prevented the inclusion of every source type and setting in the evaluation. All the data bases that were reasonably available were used in the development and evaluation of the model, and those data bases were sufficient to establish the basis for the evaluation. Based on our review of the documentation and the public comments, we conclude that the accuracy of PRIME is sufficiently documented and find it acceptable for use in a dispersion model recommended in the *Guideline*.

#### B. Appropriate for Proposed Use

Responding to a question posed in our April 2000 proposal, the majority of commenters questioned the reasonableness of requiring

simultaneous use of two models (ISC-PRIME and AERMOD) for those sources with potential downwash concerns. Commenters urged the Agency to eliminate the need to use two models for evaluating the same source. In response to this request, AERMIC developed a version of AERMOD that incorporates PRIME: AERMOD (02222) and initiated an analysis to insure that concentration estimates by AERMOD (02222) are equivalent to ISC-PRIME predictions in areas affected by downwash before it replaces ISC-PRIME. Careful thought was given to the way that PRIME was incorporated into AERMOD, with the goal of making the merge seamless. While discontinuities from the concatenation of these two sets of algorithms were of concern, we mitigated this situation wherever possible (see part D of this preamble, and the Response to Comments document<sup>4</sup>). With regard to testing the performance of AERMOD (02222), we have carefully confirmed that the AERMOD (02222)'s air quality concentration predictions in the wake region reasonably compare to those predictions from ISC-PRIME. In fact, the results indicate that AERMOD (02222)'s performance matches the performance of ISC-PRIME, and are presented in an updated evaluation report<sup>11</sup> and analysis of regulatory design concentrations.<sup>12</sup> We discuss AERMOD (02222) performance in detail in part D.

Because the technical basis for the PRIME algorithms and the AERMOD formulations have been independently peer-reviewed, we believe that further peer review of the new model (AERMOD 02222) is not necessary. The scientific formulation of the PRIME algorithms has not been changed. However, the coding for the interface between PRIME and the accompanying dispersion model had to be modified somewhat to accommodate the different ways that ISC3ST and AERMOD simulate the atmosphere. The main public concern was the interaction between the two models and whether the behavior would be appropriate for all reasonable source settings. This concern was addressed through the extensive testing conducted within the performance evaluation<sup>11</sup> and analysis of design concentrations.<sup>12</sup> Both sets of

<sup>5</sup> U.S. Environmental Protection Agency, 2002. Compendium of Reports from the Peer Review Process for AERMOD. February 2002. Available at [www.epa.gov/scram001/](http://www.epa.gov/scram001/).

<sup>6</sup> Cimarelli, A. et al., 2005. AERMOD: A Dispersion Model for Industrial Source Applications. Part I: General Model Formulation and Boundary Layer Characterization. *Journal of Applied Meteorology*, 44(5): 682-693.

<sup>7</sup> Perry, S. et al., 2005. AERMOD: A Dispersion Model for Industrial Source Applications. Part II: Model Performance against 17 Field Study Databases. *Journal of Applied Meteorology*, 44(5): 694-708.

<sup>8</sup> Paine R. J. et al., 1998. Evaluation Results for AERMOD, Draft Report. Docket No. A-99-05; II-A-05. Available at [www.epa.gov/scram001/](http://www.epa.gov/scram001/).

<sup>9</sup> Schulman, L.L. et al., 2000. Development and Evaluation of the PRIME Plum Rise and Building Downwash Model. *JAWMA* 50: 378-390.

<sup>10</sup> Electric Power Research Institute, 1997. Results of the Independent Evaluation of ISC3ST3 and ISC-PRIME. Final Report, TR-2460026, November 1997. Available at [www.epa.gov/scram001/](http://www.epa.gov/scram001/).

<sup>11</sup> Environmental Protection Agency, 2003. AERMOD: Latest Features and Evaluation Results. Publication No. EPA-454/R-03-003. Available at [www.epa.gov/scram001/](http://www.epa.gov/scram001/).

<sup>12</sup> Environmental Protection Agency, 2003. Comparison of Regulatory Design Concentrations: AERMOD versus ISC3ST, CTDMPPLUS, and ISC-PRIME. Final Report. Publication No. EPA-454/R-03-002. Available at [www.epa.gov/scram001/](http://www.epa.gov/scram001/).

analyses indicate that the new model is performing acceptably well and the results are similar to those obtained from the earlier performance evaluation<sup>8 10</sup> and analysis of regulatory design concentrations (*i.e.*, for AERMOD (99351)).<sup>13</sup>

While dry deposition is treated in ISC3ST, time and resources did not allow its incorporation in AERMOD (99351). Since no recommendation for deposition is made for regulatory applications, we did not consider that the absence of this capability compromises the suitability of AERMOD for its intended purposes. Nevertheless, a number of commenters requested that deposition algorithms be added to AERMOD, and we developed an update to AERMOD (02222) that offers dry and wet deposition for both gases and particles as an option.

The version of AERMOD under review at the 7th Conference was AERMOD (99351) and, as mentioned above, AERMIC has made a number of changes to AERMOD (99351) following this conference. These changes were initiated in response to public comments and, after the release of a new draft version of the model, in response to the recommendations from the *beta* testers. Changes made to AERMOD include the following:

- Adding the PRIME algorithms to the model (response to public comments);
- Modifying the complex terrain algorithms to make AERMOD less sensitive to the selection of the domain of the study area (response to public comments);
- Modifying the urban dispersion for low-level emission sources, such as area sources, to produce a more realistic urban dispersion and, as a part of this change, changing the minimum layer depth used to calculate the effective dispersion parameters for all dispersion settings (scientific formulation correction which was requested by *beta* testers); and
- Upgrading AERMOD to include all the newest features that exist in the latest version of ISC3ST such as Fortran90 compliance and allocatable arrays, EVENTS processing and the TOXICS option (response to public comments).

In the follow-up quality control checking of the model and the source code, additional changes were identified as necessary and the following revisions were made:

- Adding meander treatment to: (1) Stable and unstable urban cases, and (2)

the rural unstable dispersion settings (only the rural, stable dispersion setting considered meander in AERMOD (99351)—this change created a consistent treatment of air dispersion in all dispersion settings);

- Making some changes to the basic meander algorithms (improved scientific formulation); and
- Repairing miscellaneous coding errors.

As we mentioned earlier, the version of AERMOD that is being promulgated today—AERMOD (02222)—has been subjected to further performance evaluation<sup>11</sup> and analysis of design concentrations.<sup>12</sup>

### C. Implementation Issues/Additional Guidance

Other than miscellaneous suggestions for certain enhancements for AERMOD (99351) such as a Fortran90 compilation of the source code, creation of allocatable arrays, and development of a Windows® graphical user interface, no significant implementation obstacles were identified in public comments.

For AERMET (meteorological preprocessor for AERMOD), we have implemented some enhancements that commenters suggested. For site-specific applications, several commenters cited AERMOD's requirements for NWS cloud cover data. In response, we revised the AERMET to incorporate the bulk Richardson number methodology. This approach uses temperature differences near the surface of the earth, which can be routinely monitored, and eliminates the need for the cloud cover data at night. We made a number of other revisions in response to public comments, enabling AERMET to: (1) Use the old and the new Forecasting Systems Laboratory formats, (2) use the Hourly U.S. Weather Observations/ Automated Surface Observing Stations (HUSWO/ASOS) data, (3) use site-specific solar radiation and temperature gradient data to eliminate the need for cloud cover data, (4) appropriately handle meteorological data from above the arctic circle, and (5) accept a wider range of reasonable friction velocities and reduce the number of warning messages. As mentioned earlier, we added a meander component to the treatment of stable and unstable urban conditions to consistently treat meander phenomena for all cases.

AERMAP (the terrain preprocessor for AERMOD) has been upgraded in response to public comments calling for it to: (1) Treat complex terrain receptors without a dependence on the selected domain, (2) accommodate the Spatial Data Transfer Standard (SDTS) data available from the U.S. Geological

Survey (USGS), (3) appropriately use Digital Elevation Model (DEM) data with 2 different datums (NAD27 and NAD83); (4) accept all 7 digits of the North UTM coordinate, and (5) do more error-checking in the raw data (mostly checking for missing values, but not for harsh terrain changes in adjacent points). All of these recommendations have been implemented.

In response to comments about the selection of the domain affecting the results of the maximum concentrations in complex terrain and the way AERMAP estimates the effective hill height scale (*hc*), the algorithms within AERMAP and AERMOD have been adjusted so that the hill height is less sensitive to the arbitrary selection of the domain. This adjustment has been evaluated against the entire set of evaluation data. The correction was found to substantially reduce the effect of the domain size upon the computation of controlling hill heights for each receptor. Application of this change to the evaluation databases did not materially affect the evaluation results.

In general, public comments that requested additional guidance were either obviated by revisions to AERMOD (99351) and its related preprocessors or deemed unnecessary. In the latter case, the reasons were explained in the Response-to-Comments document.<sup>4</sup>

Some public comments suggested additional testing of AERMOD (99351). In fact, after the model revisions that were described earlier were completed, AERMOD (02222) was subjected to additional testing.<sup>11 12</sup> These new analyses will be discussed in part D.

With respect to a screening version of AERMOD, a tool called AERSCREEN is being developed with a *beta* version expected to be publicly available in Fall 2005. SCREEN3 is the current screening model in the *Guideline*, and since SCREEN3 has been successfully applied for a number of years, we believe that SCREEN3 produces an acceptable degree of conservatism for regulatory applications and may be used until AERSCREEN or a similar technique becomes available and tested for general application.

### D. AERMOD Revision and Reanalyses Published In 2003

#### 1. Performance Analysis for AERMOD (02222)

We have tested the performance of AERMOD (02222) by applying all of the original data sets used to support the version proposed in April, 2000: AERMOD (99351)<sup>8</sup> and ISC-PRIME.<sup>10</sup> These data sets include: 5 complex

<sup>13</sup> Peters, W.D. *et al.*, 1999. Comparison of Regulatory Design Concentrations: AERMOD vs. ISC3ST and CTDMPPLUS, Draft Report. Docket No. A-99-05; II-A-15.

terrain data sets, 7 building downwash data sets, and 5 simple terrain data sets (see appendix A of the Response-to-Comments document 4). This performance analysis, which is a check of the model's maximum concentration predictions against observed data, includes a comparison of the current version of the new model (AERMOD 02222) with ISC3ST or ISC-PRIME for downwash conditions. The results and conclusions of the performance analyses are presented in 2 sections: Non-downwash and downwash source scenarios.

#### a. Non-Downwash Cases

For the user community to obtain a full understanding of the impacts of today's proposal for the non-downwash source scenarios (flat and complex terrain), our performance evaluation of AERMOD (02222) must be discussed with respect to the old model, ISC3ST, and with respect to AERMOD (99351). Based on the evaluation, we have concluded that AERMOD (02222) significantly outperforms ISC3ST and that AERMOD (02222)'s performance is even better than that of AERMOD (99351).

#### Evaluation of AERMOD (99351)

Comparative performance statistics were calculated for both ISC3ST and AERMOD (99351) using data sets in non-downwash conditions. This analysis looked at combinations of test sites (flat and complex terrain), pollutants, and concentration averaging times. Comparisons indicated very significant improvements in performance when applying AERMOD (99351). In all but 1 of the total of 20 cases in which AERMOD (99351) could be compared to ISC3ST, AERMOD performed as well as (but generally better than) ISC3ST, that is, AERMOD predicted maximum concentrations that were closer to the measured maximum concentrations. In the most dramatic case (*i.e.*, Lovett; 24-hr) in which AERMOD performed better than ISC3ST, AERMOD's maximum concentration predictions were about the same as the measured concentrations while the ISC3ST's predicted maximum concentrations were about 9 times higher than the measured concentrations. In the one case (*i.e.*, Clifty Creek; 3-hr) where ISC3ST performed better than AERMOD (99351), ISC3ST's concentration predictions matched the observed data and the AERMOD concentration predictions were about 25% higher than the observed data. These results were reported in the supporting documentation for AERMOD (99351).

#### Evaluation of AERMOD (02222)

With the changes to AERMOD (99351) as outlined above, how has the performance of the AERMOD been affected? The performance of the current version of AERMOD is about the same or slightly better than the April 2000 version when a comparison is made over all the available data sets. There were examples of AERMOD (02222) showing better and poorer performance when compared to the performance results of AERMOD (99351). However, for those cases where AERMOD (02222)'s performance was degraded, the degradation was small. On the other side, there were more examples where AERMOD (02222) more closely predicted measured concentrations. The performance improvements were also rather small but, in general, were somewhat larger than the size of the performance degradations. There also were a number of cases where the performance remained unchanged between the 2 models. Thus, overall, there was a slight improvement in AERMOD's performance and, consequently, we believe that AERMOD (02222) significantly outperforms ISC3ST for non-downwash source scenarios.

For AERMOD (02222) with the 5 data bases examined for simple terrain, the ratios of modeled/observed Robust High Concentration ranged from 0.77 to 1.11 (1-hr average), 0.98 to 1.24 (3-hr average), 0.94 to 0.97 (24-hr average) and 0.30 to 0.97 (annual average). These ratios reflect better performance than ISC3ST for all cases.

For AERMOD (02222) with the 5 data bases examined for complex terrain, these ratios ranged from 1.03 to 1.12 (3-hr average), 0.67 to 1.78 (24-hr average) and 0.54 to 1.59 (annual average). At Tracy—the only site for which there are 1-hr data—AERMOD performed considerably better (ratio = 1.04) than either ISC3ST or CTDMPPLUS. At three of the other four sites, AERMOD generally performed much better than either ISC3ST or (where applicable) alternative models for the 3-hr and 24-hr averaging times; results were comparable for Clifty Creek (for the 3-hr averaging times, AERMOD (02222) predictions were only about 5% higher than ISC3ST's—down from 25% for AERMOD (99351) as described earlier). At the two sites where annual peak comparisons are available, AERMOD performed much better than either ISC3ST or alternative models.

#### b. Downwash Cases

For the downwash data sets, there were combinations of test sites,

pollutants, stack heights and averaging times where the proposed (ISC-PRIME) model performance could be compared to the performance of AERMOD (02222) with PRIME incorporated. There was an equal number of non-downwash cases where AERMOD performed better than ISC-PRIME and where ISC-PRIME performed better than AERMOD. There was only one case where there was a significant difference between the two models' performance, and AERMOD clearly performed better than ISC-PRIME in this case. In all other cases, the difference in the performance, whether an improvement or a degradation, was small. This comparison indicated that AERMOD (02222) performs very similarly, if not somewhat better, when compared to ISC-PRIME for downwash cases.

#### 2. Analysis of Regulatory Design Concentrations for AERMOD (02222)

Although not a performance tool, the analysis of design concentrations ("consequence" analysis) is designed to test model stability and continuity, and to help the user community understand the differences to be expected between air dispersion models. The consequences, or changes in the regulatory concentrations predicted when using the new model (AERMOD 02222) versus ISC3ST, cover 96 source scenarios and at least 3 averaging periods per source scenario, and are evaluated and summarized here. The purpose is to provide the user community with a sense of potential changes in their air dispersion analyses when applying the new model over a broad range of source types and settings. The *consequence analysis*, in which AERMOD was run for hundreds of source scenarios, also provides a check for model stability (abnormal halting of model executions when using valid control files and input data) and for spurious results (unusually high or low concentration predictions which are unexplained). The results are placed into 3 categories: non-downwash source scenarios in flat, simple terrain; downwash source scenarios in flat terrain; and, complex terrain source settings. The focus of this discussion is on how design concentrations change from those predicted by ISC3ST when applying the latest version of AERMOD versus applying the earlier version of AERMOD (99351).

#### a. Non-Downwash Cases

For the non-downwash situations, there were 48 cases covering a variety of source types (point, area, and volume sources), stack heights, terrain types (flat and simple), and dispersion



settings (urban and rural). For each case in the consequence analysis, we calculated the ratio between AERMOD's regulatory concentration predictions and ISC3ST's regulatory concentration predictions. The average ratio of AERMOD to ISC3ST-predicted concentrations changed from 1.14 when applying AERMOD (99351) to 0.96 when applying AERMOD (02222).<sup>14</sup> Thus, in general, AERMOD (02222) tends to predict concentrations closer to ISC3ST than does version 99351 proposed in April 2000. Also, the variation of the differences between ISC3ST and AERMOD has decreased with AERMOD (02222). Comparing the earlier consequence analysis to the latest study with AERMOD (02222), we saw a 25% reduction in the number of cases where the AERMOD-predicted concentrations differed by over a factor of two from ISC3ST's predictions.

#### b. Downwash Cases

For the downwash analysis, there were 20 cases covering a range of stack heights, locations of stacks relative to the building, dispersion settings, and building shapes. As before, we calculated the ratio regulatory concentration predictions from AERMOD (02222 with PRIME) and compared them as ratios to those from ISC3ST for each case. For additional information, we also included ratios with ISC-PRIME that was also proposed in April 2000.

Calculated over all the 20 cases, and for all averaging times considered, the average ISC-PRIME to ISC3ST concentration ratio is about 0.86, whereas for AERMOD (PRIME) to ISC3ST, it is 0.82. The maximum value of the concentration ratios range from 2.24 for ISC-PRIME/ISC3ST to 3.67 for AERMOD (PRIME)/ISC3ST. Similarly, the minimum value of the concentration ratio range from 0.04 for ISC-PRIME/ISC3ST to 0.08 for AERMOD (PRIME)/ISC3ST. (See Table 4–5 in reference 12.)

Although results above for the two models that use PRIME—AERMOD (02222) and ISC-PRIME—show differences, we find that building downwash is not a significant factor in determining the maximum concentrations in some of the cases, *i.e.*, the PRIME algorithms do not predict a building cavity concentration. Of those cases where downwash was important, the average concentration ratios of ISC-PRIME/ISC3ST and AERMOD (02222)/ISC3ST are about 1. The maximum value of the concentration ratios range

from 2.24 for ISC-PRIME/ISC3ST to 1.87 for AERMOD (02222)/ISC3ST and the minimum value of the concentration ratios range from 0.34 for ISC-PRIME/ISC3ST to 0.38 for AERMOD (02222)/ISC3ST. These results show relatively close agreement between the two PRIME models. (See Table 4–6 in reference 12.)

ISC3ST does not predict cavity concentrations but comparisons can be made between AERMOD and ISC-PRIME. The average AERMOD (02222) predicted 1-hour cavity concentration is about the same (112%) as the average ISC-PRIME 1-hour cavity concentration. In the extremes, the AERMOD (02222)-predicted cavity concentrations ranged from about 40% higher to 15% lower than the corresponding ISC-PRIME cavity concentration predictions. Thus, in general, where downwash is a significant factor, AERMOD (02222) and ISC-PRIME predict similar maximum concentrations. (See Table 4–8 in reference 12.)

Although the same downwash algorithms are used in both models, there are differences in the melding of PRIME with the core model, and differences in the way that these models simulate the atmosphere.<sup>15</sup> The downwash algorithm implementation therefore could not be exactly the same.

#### c. Complex Terrain

During the testing of AERMOD after modifications were made to the complex terrain algorithm (*see* discussion of hill height scale ( $h_c$ ) in B. Appropriate for Proposed Use in this preamble), a small error was found in the original complex terrain code while conducting the consequence analysis. This error was subsequently repaired. Final testing indicated that the revised complex terrain code produced reasonable results for the consequence analysis, as described below.

The analysis of predicted design concentrations included a suite of complex terrain settings. There were 28 cases covering a variety of stack heights, stack gas buoyancy values, types of hills, and distances between source and terrain. The ratios between the AERMOD (02222 & 99351)—predicted maximum concentrations and the ISC3ST maximum concentrations were calculated for all cases for a series of averaging times. When comparing AERMOD (99351) to ISC3ST and then AERMOD (02222) to ISC3ST, the average maximum concentration ratio, the highest ratios and the lowest ratios

were almost unchanged. There were no cases in either consequence analysis where AERMOD (02222 & 99351) predicted higher concentrations than those predicted by ISC3ST. Thus, in general, the consequences of moving from ISC3ST to AERMOD (02222) rather than to AERMOD (99351) in complex terrain were essentially the same. (See Table 4–9 in reference 12.)

#### E. Emission and Dispersion Modeling System (EDMS)

The Emissions and Dispersion Modeling System (EDMS) was developed jointly by the Federal Aviation Administration (FAA) and the U.S. Air Force in the late 1970s and first released in 1985 to assess the air quality of proposed airport development projects. EDMS has an emissions preprocessor and its dispersion module estimates concentrations for various averaging times for the following pollutants: CO, HC, NO<sub>x</sub>, SO<sub>x</sub>, and suspended particles (*e.g.*, PM-10). The first published application of EDMS was in December 1986 for Stapleton International Airport (FAA-EE-11-A/REV2).

In 1988, version 4a4 revised the dispersion module to include an integral dispersion submodel: GIMM (Graphical Input Microcomputer Model). This version was proposed for adoption in the *Guideline's* appendix A in February 1991 (56 FR 5900). This version was included in appendix A in July 1993 (58 FR 38816) and recommended for limited applications for assessments of localized airport impacts on air quality. FAA later updated EDMS to Version 3.0.

In response to the growing needs of air quality analysts and changes in regulations (*e.g.*, conformity requirements from the Clean Air Act Amendment of 1990), FAA updated EDMS to version 3.1, which is based on the CALINE3<sup>16</sup> and PAL2 dispersion kernels. In our April 2000 NPR we proposed to adopt the version 3.1 update to EDMS. However, this update had not been subjected to performance evaluation and no studies of EDMS' performance have been cited in appendix A of the *Guideline*. Comment was invited on whether this compromises the viability of EDMS 3.1 as a recommended or preferred model and how this deficiency can be corrected.

Several commenters expressed concern about EDMS 3.1 as a recommended model in appendix A. Indeed, there were concerns that EDMS

<sup>14</sup> A ratio of 1.00 indicates that the two models are predicting the same concentrations. See Table 4.1 in reference 12.

<sup>15</sup> AERMOD uses more complex techniques to estimate temperature profiles which, in turn, affect the calculation of the plume rise. Plume rise may affect the cavity and downwash concentrations.

<sup>16</sup> Currently listed in appendix A of the *Guideline*.

3.1 had not been as well validated as other models, nor subjected to peer review, as required by the *Guideline's* subsection 3.1.1. One of these commenters suggested that EDMS 3.1 should be presented only as one of several alternative models.

At the 7th Conference, FAA proposed for appendix A adoption an even newer, enhanced version of EDMS—version 4.0, which incorporates the AERMOD dispersion kernel (without alteration). In this system, the latest version of AERMOD would be employed as a standalone component of EDMS. This dispersion kernel was to replace PAL2 and CALINE3 currently in EDMS 3.1. There were no public comments specific to FAA's proposed AERMOD-based enhancements to EDMS announced after our April 2000 NPR.

In response to written comments on our April 2000 NPR, at the 7th Conference (transcript) FAA promised a complete evaluation process that would include sensitivity testing, intermodel comparison, and analysis of EDMS predictions against field observations. The intermodel comparisons were proposed for the UK's Atmospheric Dispersion Modeling System (ADMS).<sup>17</sup>

As we explained in our September 8, 2003 Notice of Data Availability, FAA has decided to withdraw EDMS from the *Guideline's* appendix A. We stated that no new information was therefore provided in that notice, and we affirmed support for EDMS' removal from appendix A. This removal, which we promulgate today, obviates the need for EDMS' documentation and evaluation at this time.

## V. Discussion of Public Comments on Our September 8, 2003 Notice of Data Availability

As mentioned in section III, after AERMOD was revised pursuant to comments received on the April 21, 2000 proposal, a Notice of Data Availability (NDA) was issued on September 8, 2003 to explain the modifications and to reveal AERMOD's new evaluation data. Public comments were solicited for 30 days and posted electronically in eDocket OAR-2003-0201.<sup>1</sup> (As mentioned in section IV, additional comments received since we published the final rule on April 15, 2003 are filed in Docket A-99-05; category IV-E.) We summarized these comments and developed detailed responses; these appear as appendix C to the Response-to-Comments document.<sup>4</sup> In appendix C, we considered and discussed all significant

comments, developed responses, and documented conclusions on appropriate actions for today's notice. Whenever the comments revealed any new information or suggested any alternative solutions, we considered them in our final action and made corrections or enhancements where appropriate.

In the remainder of this preamble section we highlight the main issues raised by the commenters who reviewed the NDA, and summarize our responses. These comments broadly fall into two categories: technical/operational, and administrative.

The technical/operational comments were varied. One commenter thought EPA's sensitivity studies for simulating area sources were too limited, and noted that AERMOD, when used to simulate an area source adjacent to gently sloping terrain, produced ground-level concentrations not unlike those from ISC3ST. In response we explained qualitatively how AERMOD interprets this situation and cautioned that reviewing authorities should be consulted in such scenarios for guidance on switch settings. Other commenters believed that AERMOD exhibited unrealistic treatment of complex terrain elements and offered supporting data. In response, AERMIC concluded that AERMOD does exhibit terrain amplification factors on the windward side of isolated hills, where impacts are expected to be greatest. Commenters also presented evidence that the PRIME algorithm in AERMOD misbehaves in its treatment of building wake and wind incidence. Another model was cited as having better skill in this regard. In response, we acknowledged this but established that AERMOD's capability was acceptable for handling the majority of building geometries encountered (see Response-to-Comments document<sup>4</sup> for more details).

A number of commenters addressed administrative or procedural matters. Some believed that the transition period for implementation—one year—is too short. We explained in response that one year is consistent with past practice and is adequate for most users and reviewing authorities given our previous experience with new models and the fact that AERMOD has been in the public domain for several years. Some were disappointed that the review period (30 days) for the NDA was too short. We believe that the period was adequate to review the two reports that presented updated information on the performance and practical consequences of the model as revised. Regarding the evaluation/comparison regime used for AERMOD, others objected to the

methodology used to evaluate AERMOD (one that emphasizes Robust High Concentration), claiming it is ill-suited to the way dispersion models estimate ambient concentrations. We acknowledged that other methods are available that are designed to reflect the underlying physics and formulations of dispersion models, and may be more robust in their mechanisms to account for the stochastic nature of the atmosphere. In fact, we cited several recent cases from the literature in which such methods were applied in evaluations that included AERMOD. We also explained that the approach taken by AERMIC was based on existing guidance in section 9 of Appendix W, and expressed a commitment to explore other methods in the future, including an update to section 9. We believe however that the evaluation methodology used was reasonable for its intended purpose—examining a large array of concentrations for a wide variety of source types—and confers a measure of consistency given its past use. Other commenters expressed disappointment that AERMOD wasn't compared to state-of-the-science models as advised in its peer review report. In response, we cited a substantial list of studies in which AERMOD has, in fact, been compared to some of these models, *e.g.*, HPDM and ADMS (in various combinations). On the whole, as we noted in our response, AERMOD typically performed as well as HPDM and ADMS, and all of them generally performed better than ISC3ST. Still others expressed disappointment that the evaluation input data weren't posted on our Web site until January 22, 2004—three months after the close of the comment period. We acknowledge that the input data were not posted when the NDA was published. However, the actual evaluation input data for AERMOD had not been requested previously, and we did not believe they were required as a basis for reviewing the reports we released. Moreover, since the posting, we are unaware of any belated adverse comments from anyone attempting to access and use the data.

We believe we have carefully considered and responded to public comments and concerns regarding AERMOD. We have also made efforts to update appendix W to better reflect current practice in model solicitation, evaluation and selection. We also have made other technical revisions so the guidance conforms with the latest form of the PM-10 National Ambient Air Quality Standard.

<sup>17</sup> Cambridge Environmental Research Consultants; <http://www.cerc.co.uk/>.

## VI. Final Action

In this section we explain the changes to the *Guideline* in today's action in terms of the main technical and policy concerns addressed by the Agency in its response to public comments (sections IV & V). Air quality modeling involves estimating ambient concentrations using scientific methodologies selected from a range of possible methods, and should utilize the most advanced practical technology that is available at a reasonable cost to users, keeping in mind the intended uses of the modeling and ensuring transparency to the public. With these changes, we believe that the *Guideline* continues to reflect recent advances in the field and balance these important considerations. Today's action amends Appendix W of 40 CFR part 51 as detailed below:

### AERMOD

Based on the supporting information contained in the docket, and reflected in peer review and public comments, we find that the AERMOD modeling system and PRIME are based on sound scientific principles and provide significant improvements over the current regulatory model, ISC3ST. AERMOD characterizes plume dispersion better than ISC3ST. The accuracy of the AERMOD system is generally well-documented and superior to that of ISC3ST. We are adopting the model based on its performance and other factors.

Public comments on the April 2000 proposal expressed significant concern about the need to use two models (AERMOD and ISC-PRIME) to simulate just one source when downwash posed a potential impact. In response to this concern we incorporated PRIME into AERMOD and documented satisfactory tests of the algorithm. AERMOD, with the inclusion of PRIME, is now appropriate and practical for regulatory applications.

The state-of-the-science for modeling atmospheric deposition continues to evolve, the best techniques are currently being assessed, and their results are being compared with observations. Consequently, as we now say in *Guideline* paragraph 4.2.2(c), the approach taken for any regulatory purpose should be coordinated with the appropriate reviewing authority. We agreed with the public comments calling for the addition of state-of-the-science deposition algorithms, and developed a modification to AERMOD (02222) for *beta* testing. This model, AERMOD (04079) was posted on our Web site <http://www.epa.gov/scram001/tt25.htm#aermoddep> on March 19,

2004. The latest version of AERMOD may now be used for deposition analysis in special situations.

Since AERMOD treats dispersion in complex terrain, we have merged sections 4 and 5 of appendix W, as proposed in the April 2000 NPR. And while AERMOD produces acceptable regulatory design concentrations in complex terrain, it does not replace CTDMPPLUS for detailed or receptor-oriented complex terrain analysis, as we have made clear in *Guideline* section 4.2.2. CTDMPPLUS remains available for use in complex terrain.

We have implemented the majority of suggestions to improve the AERMET, AERMAP, and AERMOD source code to reflect all the latest features that have been available in ISC3ST and that are available in the latest versions of Fortran compilers. Also, the latest formats for meteorological and terrain input data are now accepted by the new versions of AERMET and AERMAP. Our guidance, documentation and users' guides have been modified in response to a number of detailed comments.

With respect to AERMOD (02222)'s performance, we have concluded that:

(1) AERMOD (99351), the version proposed in April 2000, performs significantly better than ISC3ST, and AERMOD (02222) performs slightly better than AERMOD (99351) in non-downwash settings in both simple and complex terrain;

(2) The performance evaluation indicates that AERMOD (02222) performs slightly better than ISC-PRIME for downwash cases.

With respect to changes in AERMOD's regulatory design concentrations compared to those for ISC3ST, we have concluded that:

- For non-downwash settings, AERMOD (02222), on average, tends to predict concentrations closer to ISC3ST, and with somewhat smaller variations, than the April 2000 proposal of AERMOD;

- Where downwash is a significant factor in the air dispersion analysis, AERMOD (02222) predicts maximum concentrations that are very similar to ISC-PRIME's predictions;

- For those source scenarios where maximum 1-hour cavity concentrations are calculated, the average AERMOD (02222)-predicted cavity concentration tends to be about the same as the average ISC-PRIME cavity concentrations; and

- In complex terrain, the consequences of using AERMOD (02222) instead of ISC3ST remained essentially unchanged in general, although they varied based on individual circumstances.

Since AERMOD (02222) was released, an updated version was posted on our Web site on March 22, 2004: AERMOD (04079). The version we are releasing pursuant to today's promulgation, however, is AERMOD (04300). This version, consonant with AERMOD (02222) in its formulations, addresses the following minor code issues:

- The area source algorithm in simple and complex terrain required a correction to the way the dividing streamline height is calculated.

- In PRIME, incorrect turbulence parameters were being passed to one of the numerical plume rise routines, and this has been corrected.

- A limit has been placed on plume cooling within PRIME to avoid supercooling, which had been causing runtime instability.

- A correction has been made to avoid AERMOD's termination under certain situations with capped stacks (i.e., where the routine was attempting to take a square root of a negative number). Our testing has demonstrated only very minor impacts from these corrections on the evaluation results or the consequence analysis.

AERMOD (04300) has other draft portions of code that represent options not required for regulatory applications. These include:

- Dry and wet deposition for both gases and particles;
- The ozone limiting method (OLM), referenced in section 5.2.4 (Models for Nitrogen Dioxide—Annual Average) of the *Guideline* for treating NO<sub>x</sub> conversion; and

- The Plume Volume Molar Ratio Method (PVMRM) for treating NO<sub>x</sub> conversion.

- The bulk Richardson number approach (discussed earlier) for using near-surface temperature difference has been corrected in AERMOD (04300).

Based on the technical information contained in the docket for this rule, and with consideration of the performance analysis in combination with the analysis of design concentrations, we believe that AERMOD is appropriate for regulatory use and we are revising the *Guideline* to adopt it as a refined model today.

In implementing the changes to the *Guideline*, we recognize that there may arise occasions in which the application of a new model can result in the discovery by a permit applicant of previously unknown violations of NAAQS or PSD increments due to emissions from existing nearby sources. This potential has been acknowledged previously and is addressed in existing EPA guidance ("Air Quality Analysis for Prevention of Significant Deterioration

(PSD),” Gerald A. Emison, July 5, 1988). To summarize briefly, the guidance identifies three possible outcomes of modeling by a permit applicant and details actions that should be taken in response to each:

1. Where dispersion modeling shows no violation of a NAAQS or PSD increment in the impact area of the proposed source, a permit may be issued and no further action is required.

2. Where dispersion modeling predicts a violation of a NAAQS or PSD increment within the impact area but it is determined that the proposed source will not have a significant impact (i.e., will not be above de minimis levels) at the point and time of the modeled violation, then the permit may be issued immediately, but the State must take appropriate actions to remedy the violations within a timely manner.

3. Where dispersion modeling predicts a violation of a NAAQS or PSD increment within the impact area and it is determined that the proposed source will have a significant impact at the point and time of the modeled violation, then the permit may not be issued until the source owner or operator eliminates or reduces that impact below significance levels through additional controls or emissions offsets. Once it does so, then the permit may be issued even if the violation persists after the source owner or operator eliminates its contribution, but the State must take further appropriate actions at nearby sources to eliminate the violations within a timely manner.

In previous promulgations, we have traditionally allowed a one-year transition (“grandfather”) period for new refined techniques. Accordingly, for appropriate applications, AERMOD *may be* substituted for ISC3 during the one-year period following the promulgation of today’s notice. Beginning one year after promulgation of today’s notice, (1) applications of ISC3 with approved protocols may be accepted (see **DATES** section) and (2) AERMOD *should be* used for appropriate applications as a replacement for ISC3.

We separately issue guidance for use of modeling for facility-specific and community-scale air toxics risk assessments through the Air Toxics Risk Assessment Reference Library.<sup>18</sup> We recognize that the tools and approaches recommended therein will eventually reflect the improved formulations of the AERMOD modeling system and we expect to appropriately incorporate them as expeditiously as practicable. In

the interim, as appropriate, we will consider the use of either ISC3 or AERMOD in air toxic risk assessment applications.

#### EDMS

FAA has completed development of the new EDMS4.0 to incorporate AERMOD. The result is a conforming enhancement that offers a stronger scientific basis for air quality modeling. FAA has made this model available on its Web site, which we cite in an updated *Guideline* paragraph 7.2.4(c). As described earlier in this preamble, the summary description for EDMS will be removed from appendix A.

### VII. Final Editorial Changes to Appendix W

Today’s update of the *Guideline* takes the form of many revisions, and some of the text is unaltered. Therefore, as a purely practical matter, we have chosen to publish the new version of the entire text of appendix W and its appendix A. Guidance and editorial changes associated with the resolution of the issues discussed in the previous section are adopted in the appropriate sections of the *Guideline*, as follows:

#### Preface

You will note some minor revisions of appendix W to reflect current EPA practice.

#### Section 4

As mentioned earlier, we revised section 4 to present AERMOD as a refined regulatory modeling technique for particular applications.

#### Section 5

As mentioned above, we merged pertinent guidance in section 5 (Modeling in Complex Terrain) with that in section 4. With the anticipated widespread use of AERMOD for all terrain types, there is no longer any utility in the previous differentiation between simple and complex terrain for model selection. To further simplify, the list of acceptable, yet equivalent, screening techniques for complex terrain was removed. CTSCREEN and guidance for its use are retained; CTSCREEN remains acceptable for all terrain above stack top. The screening techniques whose descriptions we removed, i.e., Valley (as implemented in SCREEN3), COMPLEX I (as implemented in ISC3ST), and RTDM remain available for use in applicable cases where established/accepted procedures are used. Consultation with the appropriate reviewing authority is still advised for application of these screening models.

#### Section 6

As proposed, we renumbered this to become section 5. In subsection 5.1, we reference the Plume Volume Molar Ratio Method (PVMRM) for point sources of NO<sub>x</sub>, and mention that it is currently being tested to determine suitability as a refined method.

#### Section 7

As proposed, we renumbered this to become section 6. We updated the reference to the Emissions and Dispersion Modeling System (EDMS).

#### Section 8

As proposed, we revised section 8 (renumbered to section 7) to provide guidance for using AERMET (AERMOD’s meteorological preprocessor).

- In subsection 7.2.4, we introduce the atmospheric stability characterization for AERMOD.
- In subsection 7.2.5, we describe the plume rise approaches used by AERMOD.

#### Section 9

As proposed, we renumbered section 9 to become section 8. We added paragraphs 8.3.1.2(e) and 8.3.1.2(f) to clarify use of site specific meteorological data for driving CALMET in the separate circumstances of long range transport and for complex terrain applications.

#### Section 10

As proposed, we revised section 10 (renumbered section 9) to include AERMOD. In May 1999, the D.C. Court of Appeals vacated the PM-10 standard we promulgated in 1997, and this standard has since been removed from the CFR (69 FR 45592; July 30, 2004). Paragraph 10.2.3.2(a) has been corrected to be consistent with the current (original) PM-10 standard, which is based on expected exceedances.

#### Section 11

As proposed, we renumbered section 11 to become section 10.

#### Sections 12 & 13

We renumbered section 12 to become section 11, and section 13 (References) to become section 12. We revised renumbered section 12 by adding some references, deleting obsolete/superseded ones, and resequencing. You will note that the peer scientific review for AERMOD and latest evaluation references have been included.

#### Appendix A

We added AERMOD (with the PRIME downwash algorithm integrated) to

<sup>18</sup> [http://www.epa.gov/ttn/fera/risk\\_atra\\_main.html](http://www.epa.gov/ttn/fera/risk_atra_main.html).

appendix A. We removed EDMS from appendix A. We also updated the description for CALPUFF, and made minor updates to some of the other model descriptions.

#### *Availability of Related Information*

Our Air Quality Modeling Group maintains an Internet Web site (Support Center for Regulatory Air Models—SCRAM) at: <http://www.epa.gov/scram001>. You may find codes and documentation for models referenced in today's action on the SCRAM Web site. In addition, we have uploaded various support documents (e.g., evaluation reports).

### **VIII. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to EO 12866 review.

#### *B. Paperwork Reduction Act*

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### *C. Regulatory Flexibility Act (RFA)*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that meets the RFA default definitions for small business (based on Small Business Administration size standards), as described in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. As this rule merely updates existing technical requirements for air quality modeling analyses mandated by various CAA programs (e.g., prevention of significant deterioration, new source review, State Implementation Plan revisions) and imposes no new regulatory burdens, there will be no additional impact on small entities regarding reporting, recordkeeping, and compliance requirements.

#### *D. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule recommends a new modeling system, AERMOD, to replace ISC3ST as an analytical tool for use in SIP revisions and for calculating PSD increment consumption. AERMOD has been used for these purposes on a case-by-case basis (per *Guideline* subsection 3.2.2) for several years. Since the two modeling systems are comparable in scope and purpose, use of AERMOD itself does not involve any significant increase in costs. Moreover, modeling costs (which include those for input data acquisition) are typically among the implementation costs that are considered as part of the programs (*i.e.*, PSD) that establish and periodically revise requirements for compliance.

Any incremental modeling costs attributable to today's rule do not approach the \$100 million threshold prescribed by UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule therefore contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities (*see* D. Unfunded Mandates Reform Act of 1995, above). The rule would add better, more accurate techniques for air dispersion modeling analyses and does not impose any additional requirements for any of the affected parties covered under Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. As stated above (*see* D. Unfunded Mandates Reform Act of 1995, above), the rule does not impose any new requirements for

calculating PSD increment consumption, and does not impose any additional requirements for the regulated community, including Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this rule.

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule.

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

Executive Order 13045 applies to any rule that EPA determines (1) to be "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both the criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it does not impose an economically significant regulatory action as defined by Executive Order 12866 and the action does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications,

test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Congressional Review Act of 1998*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2), and will be effective 30 days from the publication date of this notice.

#### **List of Subjects in 40 CFR Part 51**

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

Dated: October 21, 2005.

**Stephen L. Johnson,**  
*Administrator.*

■ Part 51, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 100; 42 U.S.C. 7401–7671q.

■ 2. Appendix W to Part 51 revised to read as follows:

**Appendix W to Part 51—Guideline on Air Quality Models****Preface**

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act, Congress mandated such consistency and encouraged the standardization of model applications. The *Guideline on Air Quality Models* (hereafter, *Guideline*) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The *Guideline* provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emission limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Historically, three primary activities have provided direct input to revisions of the *Guideline*. The first is a series of annual EPA workshops conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity was the solicitation and review of new models from the technical and user community. In the March 27, 1980 **Federal Register**, a procedure was outlined for the submittal to EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by EPA, have been considered for recognition in the *Guideline*. The third activity is the extensive on-going research efforts by EPA and others in air quality and meteorological modeling.

c. Based primarily on these three activities, new sections and topics have been included as needed. EPA does not make changes to the guidance on a predetermined schedule, but rather on an as-needed basis. EPA believes that revisions of the *Guideline* should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the **Federal Register**. Information on the current status of modeling guidance can always be obtained from EPA's Regional Offices.

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**1.0 Introduction**

a. The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source reviews (NSR), including prevention of significant deterioration (PSD).<sup>1 2 3</sup> Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies and by industry. The guidance is appropriate for use by other Federal agencies and by State agencies with air quality and land management responsibilities. The *Guideline* serves to identify, for all interested parties, those techniques and data bases EPA considers acceptable. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

b. Due to limitations in the spatial and temporal coverage of air quality measurements, monitoring data normally are not sufficient as the sole basis for demonstrating the adequacy of emission limits for existing sources. Also, the impacts of new sources that do not yet exist can only be determined through modeling. Thus, models, while uniquely filling one program need, have become a primary analytical tool in most air quality assessments. Air quality measurements can be used in a complementary manner to dispersion models, with due regard for the strengths and weaknesses of both analysis techniques. Measurements are particularly useful in assessing the accuracy of model estimates. The use of air quality measurements alone however could be preferable, as detailed in a later section of this document, when models are found to be unacceptable and monitoring data with sufficient spatial and temporal coverage are available.

c. It would be advantageous to categorize the various regulatory programs and to apply



a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling "cookbook". There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources.

Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgment are frequently required. As modeling efforts become more complex, it is increasingly important that they be directed by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgment of experienced meteorologists and analysts is essential.

d. The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the States and EPA Regional Offices, by many industries and trade associations, and also by the deliberations of Congress, that consistency in the selection and application of models and data bases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies and specifying emission limits. Such consistency is not, however, promoted at the expense of model and data base accuracy. The *Guideline* provides a consistent basis for selection of the most accurate models and data bases for use in air quality assessments.

e. Recommendations are made in the *Guideline* concerning air quality models, data bases, requirements for concentration estimates, the use of measured data in lieu of model estimates, and model evaluation procedures. Models are identified for some specific applications. The guidance provided here should be followed in air quality analyses relative to State Implementation Plans and in supporting analyses required by EPA, State and local agency air programs. EPA may approve the use of another technique that can be demonstrated to be more appropriate than those recommended in this guide. This is discussed at greater length in Section 3. In all cases, the model applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from this guide should be carefully documented and fully supported.

f. From time to time situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with the headquarters, Regional Office, State, and local agency modeling representatives to ensure consistency in modeling guidance and to

promote the use of more accurate air quality models and data bases. The workshops serve to provide further explanations of *Guideline* requirements to the Regional Offices and workshop reports are issued with this clarifying information. In addition, findings from ongoing research programs, new model development, or results from model evaluations and applications are continuously evaluated. Based on this information changes in the guidance may be indicated.

g. All changes to the *Guideline* must follow rulemaking requirements since the *Guideline* is codified in Appendix W of Part 51. EPA will promulgate proposed and final rules in the **Federal Register** to amend this Appendix. Ample opportunity for public comment will be provided for each proposed change and public hearings scheduled if requested.

h. A wide range of topics on modeling and data bases are discussed in the *Guideline*. Section 2 gives an overview of models and their appropriate use. Section 3 provides specific guidance on the use of "preferred" air quality models and on the selection of alternative techniques. Sections 4 through 7 provide recommendations on modeling techniques for application to simple-terrain stationary source problems, complex terrain problems, and mobile source problems. Specific modeling requirements for selected regulatory issues are also addressed. Section 8 discusses issues common to many modeling analyses, including acceptable model components. Section 9 makes recommendations for data inputs to models including source, meteorological and background air quality data. Section 10 covers the uncertainty in model estimates and how that information can be useful to the regulatory decision-maker. The last chapter summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

i. Appendix W to 40 CFR Part 51 itself contains an appendix: Appendix A. Thus, when reference is made to "Appendix A" in this document, it refers to Appendix A to Appendix W to 40 CFR Part 51. Appendix A contains summaries of refined air quality models that are "preferred" for specific applications; both EPA models and models developed by others are included.

## 2.0 Overview of Model Use

a. Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their use. Such information is provided in this section.

### 2.1 Suitability of Models

a. The extent to which a specific air quality model is suitable for the evaluation of source impact depends upon several factors. These include: (1) The meteorological and topographic complexities of the area; (2) the level of detail and accuracy needed for the analysis; (3) the technical competence of those undertaking such simulation modeling; (4) the resources available; and (5) the detail and accuracy of the data base, *i.e.*, emissions

inventory, meteorological data, and air quality data. Appropriate data should be available before any attempt is made to apply a model. A model that requires detailed, precise, input data should not be used when such data are unavailable. However, assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in emissions and meteorological conditions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

b. Air quality models have been applied with the most accuracy, or the least degree of uncertainty, to simulations of long term averages in areas with relatively simple topography. Areas subject to major topographic influences experience meteorological complexities that are extremely difficult to simulate. Although models are available for such circumstances, they are frequently site specific and resource intensive. In the absence of a model capable of simulating such complexities, only a preliminary approximation may be feasible until such time as better models and data bases become available.

c. Models are highly specialized tools. Competent and experienced personnel are an essential prerequisite to the successful application of simulation models. The need for specialists is critical when the more sophisticated models are used or the area being investigated has complicated meteorological or topographic features. A model applied improperly, or with inappropriate data, can lead to serious misjudgements regarding the source impact or the effectiveness of a control strategy.

d. The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required depend on the nature of the model and its complexity, the detail of the data base, the difficulty of the application, and the amount and level of expertise required. The costs of manpower and computational facilities may also be important factors in the selection and use of a model for a specific analysis. However, it should be recognized that under some sets of physical circumstances and accuracy requirements, no present model may be appropriate. Thus, consideration of these factors should lead to selection of an appropriate model.

### 2.2 Levels of Sophistication of Models

a. There are two levels of sophistication of models. The first level consists of relatively simple estimation techniques that generally use preset, worst-case meteorological conditions to provide conservative estimates of the air quality impact of a specific source, or source category. These are called screening techniques or screening models. The purpose of such techniques is to eliminate the need of more detailed modeling for those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS)<sup>4</sup> or the allowable prevention of significant deterioration (PSD) concentration increments.<sup>2,3</sup> If a screening technique indicates that the concentration contributed by the source exceeds the PSD increment or



the increment remaining to just meet the NAAQS, then the second level of more sophisticated models should be applied.

b. The second level consists of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result they provide a more refined and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies. These are referred to as refined models.

c. The use of screening techniques followed, as appropriate, by a more refined analysis is always desirable. However there are situations where the screening techniques are practically and technically the only viable option for estimating source impact. In such cases, an attempt should be made to acquire or improve the necessary data bases and to develop appropriate analytical techniques.

### 2.3 Availability of Models

a. For most of the screening and refined models discussed in the *Guideline*, codes, associated documentation and other useful information are available for download from EPA's Support Center for Regulatory Air Modeling (SCRAM) Internet Web site at <http://www.epa.gov/scram001>. A list of alternate models that can be used with case-by-case justification (subsection 3.2) and an example air quality analysis checklist are also posted on this Web site. This is a site with which modelers should become familiar.

### 3.0 Recommended Air Quality Models

a. This section recommends the approach to be taken in determining refined modeling techniques for use in regulatory air quality programs. The status of models developed by EPA, as well as those submitted to EPA for review and possible inclusion in this guidance, is discussed. The section also addresses the selection of models for individual cases and provides recommendations for situations where the preferred models are not applicable. Two additional sources of modeling guidance are the Model Clearinghouse<sup>5</sup> and periodic Regional/State/Local Modelers workshops.

b. In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the "appropriate reviewing authority". In some EPA regions, authority for NSR and PSD permitting and related activities has been delegated to State and even local agencies. In these cases, such agencies are "representatives" of the respective regions. Even in these circumstances, the Regional Office retains the ultimate authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as "Regional Administrator"), this will be stipulated. If there is any question as to the

appropriate reviewing authority, you should contact the Regional modeling contact (<http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts>) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts.

c. In all regulatory analyses, especially if other-than-preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and are encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum.

d. It should not be construed that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific models is needed to promote consistency in model selection and application.

e. The 1980 solicitation of new or different models from the technical community<sup>6</sup> and the program whereby these models were evaluated, established a means by which new models are identified, reviewed and made available in the *Guideline*. There is a pressing need for the development of models for a wide range of regulatory applications. Refined models that more realistically simulate the physical and chemical process in the atmosphere and that more reliably estimate pollutant concentrations are needed.

### 3.1 Preferred Modeling Techniques

#### 3.1.1 Discussion

a. EPA has developed models suitable for regulatory application. Other models have been submitted by private developers for possible inclusion in the *Guideline*. Refined models which are preferred and recommended by EPA have undergone evaluation exercises<sup>7 8 9 10</sup> that include statistical measures of model performance in comparison with measured air quality data as suggested by the American Meteorological Society<sup>11</sup> and, where possible, peer scientific reviews.<sup>12 13 14</sup>

b. When a single model is found to perform better than others, it is recommended for application as a preferred model and listed in Appendix A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in Appendix A may be selected on the basis of other factors such as past use, public familiarity, cost or resource requirements, and availability. Accordingly, dispersion models listed in Appendix A meet these conditions:

i. The model must be written in a common programming language, and the executable(s) must run on a common computer platform.

ii. The model must be documented in a user's guide which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for other recommended models in Appendix A.

iii. The model must be accompanied by a complete test data set including input parameters and output results. The test data must be packaged with the model in computer-readable form.

iv. The model must be useful to typical users, e.g., State air pollution control agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

v. The model documentation must include a comparison with air quality data (and/or tracer measurements) or with other well-established analytical techniques.

vi. The developer must be willing to make the model and source code available to users at reasonable cost or make them available for public access through the Internet or National Technical Information Service: The model and its code cannot be proprietary.

c. The evaluation process includes a determination of technical merit, in accordance with the above six items including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate data base and to a peer scientific review. Models for wide use (not just an isolated case) that are found to perform better will be proposed for inclusion as preferred models in future *Guideline* revisions.

d. No further evaluation of a preferred model is required for a particular application if the EPA recommendations for regulatory use specified for the model in the *Guideline* are followed. Alternative models to those listed in Appendix A should generally be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in subsection 3.2.

#### 3.1.2 Recommendations

a. Appendix A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user should select a model from that appendix. These models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary of Appendix A. Further recommendations for the application of these models to specific source problems are found in subsequent sections of the *Guideline*.

b. If changes are made to a preferred model without affecting the concentration estimates, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer platform or those that affect only the format or averaging time of the model results. However, when any changes are made, the Regional Administrator should require a test

case example to demonstrate that the concentration estimates are not affected.

c. A preferred model should be operated with the options listed in Appendix A as "Recommendations for Regulatory Use." If other options are exercised, the model is no longer "preferred." Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status as a preferred model. Use of the model must then be justified on a case-by-case basis.

### 3.2 Use of Alternative Models

#### 3.2.1 Discussion

a. Selection of the best techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this *Guideline* cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. An EPA reference<sup>15</sup> provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations. This protocol is available to assist in developing a consistent approach when justifying the use of other-than-preferred modeling techniques recommended in the *Guideline*. The procedures in this protocol provide a general framework for objective decision-making on the acceptability of an alternative model for a given regulatory application. These objective procedures may be used for conducting both the technical evaluation of the model and the field test or performance evaluation. An ASTM reference<sup>16</sup> provides a general philosophy for developing and implementing advanced statistical evaluations of atmospheric dispersion models, and provides an example statistical technique to illustrate the application of this philosophy.

b. This section discusses the use of alternate modeling techniques and defines three situations when alternative models may be used.

#### 3.2.2 Recommendations

a. Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable.

b. An alternative model should be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model may normally be approved for use: (1) If a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model; (2) if a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs

better for the given application than a comparable model in Appendix A; or (3) if the preferred model is less appropriate for the specific application, or there is no preferred model. Any one of these three separate conditions may make use of an alternative model acceptable. Some known alternative models that are applicable for selected situations are listed on EPA's SCRAM Internet Web site (subsection 2.3). However, inclusion there does not confer any unique status relative to other alternative models that are being or will be developed in the future.

c. Equivalency, condition (1) in paragraph (b) of this subsection, is established by demonstrating that the maximum or highest, second highest concentrations are within 2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is so nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. Two percent was selected as the basis for equivalency since it is a rough approximation of the fraction that PSD Class I increments are of the NAAQS for SO<sub>2</sub>, i.e., the difference in concentrations that is judged to be significant. However, notwithstanding this demonstration, models that are not equivalent may be used when one of the two other conditions described in paragraphs (d) and (e) of this subsection are satisfied.

d. For condition (2) in paragraph (b) of this subsection, established procedures and techniques<sup>15 16</sup> for determining the acceptability of a model for an individual case based on superior performance should be followed, as appropriate. Preparation and implementation of an evaluation protocol which is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

e. Finally, for condition (3) in paragraph (b) of this subsection, an alternative refined model may be used provided that:

- i. The model has received a scientific peer review;
- ii. The model can be demonstrated to be applicable to the problem on a theoretical basis;
- iii. The data bases which are necessary to perform the analysis are available and adequate;
- iv. Appropriate performance evaluations of the model have shown that the model is not biased toward underestimates; and
- v. A protocol on methods and procedures to be followed has been established.

### 3.3 Availability of Supplementary Modeling Guidance

a. The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse<sup>5</sup> and also holds periodic

workshops with headquarters, Regional Office, State, and local agency modeling representatives.

b. The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action.

## 4.0 Traditional Stationary Source Models

### 4.1 Discussion

a. Guidance in this section applies to modeling analyses for which the predominant meteorological conditions that control the design concentration are steady state and for which the transport distances are nominally 50km or less. The models recommended in this section are generally used in the air quality impact analysis of stationary sources for most criteria pollutants. The averaging time of the concentration estimates produced by these models ranges from 1 hour to an annual average.

b. Simple terrain, as used here, is considered to be an area where terrain features are all lower in elevation than the top of the stack of the source(s) in question. Complex terrain is defined as terrain exceeding the height of the stack being modeled.

c. In the early 1980s, model evaluation exercises were conducted to determine the "best, most appropriate point source model" for use in simple terrain.<sup>12</sup> No one model was found to be clearly superior and, based on past use, public familiarity, and availability, ISC (predecessor to ISC3<sup>17</sup>) became the recommended model for a wide range of regulatory applications. Other refined models which also employed the same basic Gaussian kernel as in ISC, i.e., BLP, CALINE3 and OCD, were developed for specialized applications (Appendix A). Performance evaluations were also made for these models, which are identified below.

d. Encouraged by the development of pragmatic methods for better characterization of plume dispersion<sup>18 19 20 21</sup> the AMS/EPA Regulatory Model Improvement Committee (AERMIC) developed AERMOD.<sup>22</sup> AERMOD employs best state-of-practice parameterizations for characterizing the meteorological influences and dispersion. The model utilizes a probability density function (pdf) and the superposition of several Gaussian plumes to characterize the distinctly non-Gaussian nature of the vertical pollutant distribution for elevated plumes during convective conditions; otherwise the distribution is Gaussian. Also, nighttime urban boundary layers (and plumes within them) have the turbulence enhanced by AERMOD to simulate the influence of the urban heat island. AERMOD has been evaluated using a variety of data sets and has been found to perform better than ISC3 for many applications, and as well or better than CTDMPPLUS for several complex terrain data

sets (Section A.1; subsection n). The current version of AERMOD has been modified to include an algorithm for dry and wet deposition for both gases and particles. Note that when deposition is invoked, mass in the plume is depleted. Availability of this version is described in Section A.1, and is subject to applicable guidance published in the *Guideline*.

e. A new building downwash algorithm<sup>23</sup> was developed and tested within AERMOD. The PRIME algorithm has been evaluated using a variety of data sets and has been found to perform better than the downwash algorithm that is in ISC3, and has been shown to perform acceptably in tests within AERMOD (Section A.1; subsection n).

## 4.2 Recommendations

### 4.2.1 Screening Techniques

#### 4.2.1.1 Simple Terrain

a. Where a preliminary or conservative estimate is desired, point source screening techniques are an acceptable approach to air quality analyses. EPA has published guidance for screening procedures.<sup>24 25</sup>

b. All screening procedures should be adjusted to the site and problem at hand. Close attention should be paid to whether the area should be classified urban or rural in accordance with Section 7.2.3. The climatology of the area should be studied to help define the worst-case meteorological conditions. Agreement should be reached between the model user and the appropriate reviewing authority on the choice of the screening model for each analysis, and on the input data as well as the ultimate use of the results.

#### 4.2.1.2 Complex Terrain

a. CTSCREEN<sup>26</sup> can be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and terrain interaction and requires detailed terrain data representative of the modeling domain. The model description and user's instructions are contained in the user's guide.<sup>26</sup> The terrain data must be digitized in the same manner as for CTDMPPLUS and a terrain processor is available.<sup>27</sup> A discussion of the model's performance characteristics is provided in a technical paper.<sup>28</sup> CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed ( $u$ ), standard deviation of horizontal and vertical wind speeds ( $\sigma_v$ ,  $\sigma_w$ ), vertical potential temperature gradient ( $d\theta/dz$ ), friction velocity ( $u_*$ ), Monin-Obukhov length ( $L$ ), mixing height ( $z_i$ ) as a function of terrain

height, and wind directions for both neutral/stable conditions and unstable convective conditions. Table 4–1 contains the matrix of meteorological variables that is used for each CTSCREEN analysis. There are 96 combinations, including exceptions, for each wind direction for the neutral/stable case, and 108 combinations for the unstable case. The specification of wind direction, however, is handled internally, based on the source and terrain geometry. Although CTSCREEN is designed to address a single source scenario, there are a number of options that can be selected on a case-by-case basis to address multi-source situations. However, the appropriate reviewing authority should be consulted, and concurrence obtained, on the protocol for modeling multiple sources with CTSCREEN to ensure that the worst case is identified and assessed. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

b. Placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases. In order to avoid excessively large computer runs due to such a large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors carefully located over the area of interest. The second model run would use a more dense array of receptors in areas showing potential for high concentrations, as indicated by the results of the first model run.

c. As mentioned above, digitized contour data must be preprocessed<sup>27</sup> to provide hill shape parameters in suitable input format. The user then supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may "appear to the plume" as smaller, multiple hills, it may be necessary to model

the terrain both as a single feature and as multiple hills to determine design concentrations.

d. Other screening techniques<sup>17 25 29</sup> may be acceptable for complex terrain cases where established procedures are used. The user is encouraged to confer with the appropriate reviewing authority if any unresolvable problems are encountered, e.g., applicability, meteorological data, receptor siting, or terrain contour processing issues.

### 4.2.2 Refined Analytical Techniques

a. A brief description of each preferred model for refined applications is found in Appendix A. Also listed in that appendix are availability, the model input requirements, the standard options that should be selected when running the program, and output options.

b. For a wide range of regulatory applications in all types of terrain, the recommended model is AERMOD. This recommendation is based on extensive developmental and performance evaluation (Section A.1; subsection n). Differentiation of simple versus complex terrain is unnecessary with AERMOD. In complex terrain, AERMOD employs the well-known dividing-streamline concept in a simplified simulation of the effects of plume-terrain interactions.

c. If aerodynamic building downwash is important for the modeling analysis, e.g., paragraph 6.2.2(b), then the recommended model is AERMOD. The state-of-the-science for modeling atmospheric deposition is evolving and the best techniques are currently being assessed and their results are being compared with observations. Consequently, while deposition treatment is available in AERMOD, the approach taken for any purpose should be coordinated with the appropriate reviewing authority. Line sources can be simulated with AERMOD if point or volume sources are appropriately combined. If buoyant plume rise from line sources is important for the modeling analysis, the recommended model is BLP. For other special modeling applications, CALINE3 (or CAL3QHCR on a case-by-case basis), OCD, and EDMS are available as described in Sections 5 and 6.

d. If the modeling application involves a well defined hill or ridge and a detailed dispersion analysis of the spatial pattern of plume impacts is of interest, CTDMPPLUS, listed in Appendix A, is available. CTDMPPLUS provides greater resolution of concentrations about the contour of the hill feature than does AERMOD through a different plume-terrain interaction algorithm.

TABLE 4–1A.—NEUTRAL/STABLE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific values				
U (m/s) .....	1.0	2.0	3.0	4.0	5.0
$\sigma_v$ (m/s) .....	0.3	0.75			
$\sigma_w$ (m/s) .....	0.08	0.15	0.30	0.75	
$\Delta\theta/\Delta z$ (K/m) .....	0.01	0.02	0.035		
WD .....	(Wind direction is optimized internally for each meteorological combination.)				

## Exceptions:

(1) If  $U \leq 2$  m/s and  $\sigma_v \leq 0.3$  m/s, then include  $\sigma_w = 0.04$  m/s.

(2) If  $\sigma_w = 0.75$  m/s and  $U \geq 3.0$  m/s, then

$\Delta\theta/\Delta z$  is limited to  $\leq 0.01$  K/m.

(3) If  $U \geq 4$  m/s, then  $\sigma_w \geq 0.15$  m/s.

(4)  $\sigma_w \leq \sigma_v$

TABLE 4-1B.—UNSTABLE/CONVECTIVE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific values				
U (m/s) .....	1.0	2.0	3.0	4.0	5.0
$U_*$ (m/s) .....	0.1	0.3	0.5		
L (m) .....	-10	-50	-90		
$\Delta\theta/\Delta z$ (K/m) .....	0.030	(potential temperature gradient above $Z_i$ )			
$Z_i$ (m) .....	0.5h	1.0h	1.5h	(h = terrain height)	

## 5.0 Models for Ozone, Particulate Matter, Carbon Monoxide, Nitrogen Dioxide, and Lead

### 5.1 Discussion

a. This section identifies modeling approaches or models appropriate for addressing ozone ( $O_3$ )<sup>a</sup>, carbon monoxide (CO), nitrogen dioxide ( $NO_2$ ), particulates (PM-2.5<sup>a</sup> and PM-10), and lead. These pollutants are often associated with emissions from numerous sources. Generally, mobile sources contribute significantly to emissions of these pollutants or their precursors. For cases where it is of interest to estimate concentrations of CO or  $NO_2$  near a single or small group of stationary sources, refer to Section 4. (Modeling approaches for  $SO_2$  are discussed in Section 4.)

b. Several of the pollutants mentioned in the preceding paragraph are closely related to each other in that they share common sources of emissions and/or are subject to chemical transformations of similar precursors.<sup>30,31</sup> For example, strategies designed to reduce ozone could have an effect on the secondary component of PM-2.5 and vice versa. Thus, it makes sense to use models which take into account the chemical coupling between  $O_3$  and PM-2.5, when feasible. This should promote consistency among methods used to evaluate strategies for reducing different pollutants as well as consistency among the strategies themselves. Regulatory requirements for the different pollutants are likely to be due at different times. Thus, the following paragraphs identify appropriate modeling approaches for pollutants individually.

c. The NAAQS for ozone was revised on July 18, 1997 and is now based on an 8-hour averaging period. Models for ozone are needed primarily to guide choice of strategies to correct an observed ozone problem in an area not attaining the NAAQS for ozone. Use of photochemical grid models is the recommended means for identifying strategies needed to correct high ozone concentrations in such areas. Such models need to consider emissions of volatile organic compounds (VOC), nitrogen oxides ( $NO_x$ ) and carbon monoxide (CO), as well as means for generating meteorological data governing

transport and dispersion of ozone and its precursors. Other approaches, such as Lagrangian or observational models may be used to guide choice of appropriate strategies to consider with a photochemical grid model. These other approaches may be sufficient to address ozone in an area where observed concentrations are near the NAAQS or only slightly above it. Such a decision needs to be made on a case-by-case basis in concert with the Regional Office.

d. A control agency with jurisdiction over one or more areas with significant ozone problems should review available ambient air quality data to assess whether the problem is likely to be significantly impacted by regional transport.<sup>32</sup> Choice of a modeling approach depends on the outcome of this review. In cases where transport is considered significant, use of a nested regional model may be the preferred approach. If the observed problem is believed to be primarily of local origin, use of a model with a single horizontal grid resolution and geographical coverage that is less than that of a regional model may suffice.

e. The fine particulate matter NAAQS, promulgated on July 18, 1997, includes particles with an aerodynamic diameter nominally less than or equal to 2.5 micrometers (PM-2.5). Models for PM-2.5 are needed to assess adequacy of a proposed strategy for meeting annual and/or 24-hour NAAQS for PM-2.5. PM-2.5 is a mixture consisting of several diverse components. Because chemical/physical properties and origins of each component differ, it may be appropriate to use either a single model capable of addressing several of the important components or to model primary and secondary components using different models. Effects of a control strategy on PM-2.5 is estimated from the sum of the effects on the components composing PM-2.5. Model users may refer to guidance<sup>33</sup> for further details concerning appropriate modeling approaches.

f. A control agency with jurisdiction over one or more areas with PM-2.5 problems should review available ambient air quality data to assess which components of PM-2.5 are likely to be major contributors to the problem. If it is determined that regional transport of secondary particulates, such as sulfates or nitrates, is likely to contribute significantly to the problem, use of a regional model may be the preferred approach. Otherwise, coverage may be limited to a domain that is urban scale or less. Special care should be taken to select appropriate

geographical coverage for a modeling application.<sup>33</sup>

g. The NAAQS for PM-10 was promulgated in July 1987 (40 CFR 50.6). A SIP development guide<sup>34</sup> is available to assist in PM-10 analyses and control strategy development. EPA promulgated regulations for PSD increments measured as PM-10 in a notice published on June 3, 1993 (40 CFR 51.166(c)). As an aid to assessing the impact on ambient air quality of particulate matter generated from prescribed burning activities, a reference<sup>35</sup> is available.

h. Models for assessing the impacts of particulate matter may involve dispersion models or receptor models, or a combination (depending on the circumstances). Receptor models focus on the behavior of the ambient environment at the point of impact as opposed to source-oriented dispersion models, which focus on the transport, diffusion, and transformation that begin at the source and continue to the receptor site. Receptor models attempt to identify and apportion sources by relating known sample compositions at receptors to measured or inferred compositions of source emissions. When complete and accurate emission inventories or meteorological characterization are unavailable, or unknown pollutant sources exist, receptor modeling may be necessary.

i. Models for assessing the impact of CO emissions are needed for a number of different purposes. Examples include evaluating effects of point sources, congested intersections and highways, as well as the cumulative effect of numerous sources of CO in an urban area.

j. Models for assessing the impact of sources on ambient  $NO_2$  concentrations are primarily needed to meet new source review requirements, such as addressing the effect of a proposed source on PSD increments for annual concentrations of  $NO_2$ . Impact of an individual source on ambient  $NO_2$  depends, in part, on the chemical environment into which the source's plume is to be emitted. There are several approaches for estimating effects of an individual source on ambient  $NO_2$ . One approach is through use of a plume-in-grid algorithm imbedded within a photochemical grid model. However, because of the rigor and complexity involved, and because this approach may not be capable of defining sub-grid concentration gradients, the plume-in-grid approach may be impractical for estimating effects on an annual PSD increment. A second approach which does not have this limitation and accommodates

<sup>a</sup> Modeling for attainment demonstrations for  $O_3$  and PM-2.5 should be conducted in time to meet required SIP submission dates as provided for in the respective implementation rules. Information on implementation of the 8-hr  $O_3$  and PM-2.5 standards is available at: <http://www.epa.gov/ttn/naags/>.

distance-dependent conversion ratios—the Plume Volume Molar Ratio Method (PVMRM)<sup>36</sup>—is currently being tested to determine suitability as a refined method. A third (screening) approach is to develop site specific (domain-wide) conversion factors based on measurements. If it is not possible to develop site specific conversion factors and use of the plume-in-grid algorithm is also not feasible, other screening procedures may be considered.

k. In January 1999 (40 CFR Part 58, Appendix D), EPA gave notice that concern about ambient lead impacts was being shifted away from roadways and toward a focus on stationary point sources. EPA has also issued guidance on siting ambient monitors in the vicinity of such sources.<sup>37</sup> For lead, the SIP should contain an air quality analysis to determine the maximum quarterly lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. General guidance for lead SIP development is also available.<sup>38</sup>

## 5.2 Recommendations

### 5.2.1 Models for Ozone

a. *Choice of Models for Multi-source Applications.* Simulation of ozone formation and transport is a highly complex and resource intensive exercise. Control agencies with jurisdiction over areas with ozone problems are encouraged to use photochemical grid models, such as the Models-3/Community Multi-scale Air Quality (CMAQ) modeling system,<sup>39</sup> to evaluate the relationship between precursor species and ozone. Judgement on the suitability of a model for a given application should consider factors that include use of the model in an attainment test, development of emissions and meteorological inputs to the model and choice of episodes to model.<sup>32</sup> Similar models for the 8-hour NAAQS and for the 1-hour NAAQS are appropriate.

b. *Choice of Models to Complement Photochemical Grid Models.* As previously noted, observational models, Lagrangian models, or the refined version of the Ozone Isopleth Plotting Program (OZIPR)<sup>40</sup> may be used to help guide choice of strategies to simulate with a photochemical grid model and to corroborate results obtained with a grid model. Receptor models have also been used to apportion sources of ozone precursors (e.g., VOC) in urban domains. EPA has issued guidance<sup>32</sup> in selecting appropriate techniques.

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

### 5.2.2 Models for Particulate Matter

#### 5.2.2.1 PM-2.5

a. *Choice of Models for Multi-source Applications.* Simulation of phenomena resulting in high ambient PM-2.5 can be a multi-faceted and complex problem resulting from PM-2.5's existence as an aerosol mixture. Treating secondary components of PM-2.5, such as sulfates and nitrates, can be

a highly complex and resource-intensive exercise. Control agencies with jurisdiction over areas with secondary PM-2.5 problems are encouraged to use models which integrate chemical and physical processes important in the formation, decay and transport of these species (e.g., Models-3/CMAQ<sup>38</sup> or REMSAD<sup>41</sup>). Primary components can be simulated using less resource-intensive techniques. Suitability of a modeling approach or mix of modeling approaches for a given application requires technical judgement,<sup>33</sup> as well as professional experience in choice of models, use of the model(s) in an attainment test, development of emissions and meteorological inputs to the model and selection of days to model.

b. *Choice of Analysis Techniques to Complement Air Quality Simulation Models.* Receptor models may be used to corroborate predictions obtained with one or more air quality simulation models. They may also be potentially useful in helping to define specific source categories contributing to major components of PM-2.5.<sup>33</sup>

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

#### 5.2.2.2 PM-10

a. Screening techniques like those identified in subsection 4.2.1 are applicable to PM-10. Conservative assumptions which do not allow removal or transformation are suggested for screening. Thus, it is recommended that subjectively determined values for “half-life” or pollutant decay not be used as a surrogate for particle removal. Proportional models (rollback/forward) may not be applied for screening analysis, unless such techniques are used in conjunction with receptor modeling.<sup>34</sup>

b. Refined models such as those discussed in subsection 4.2.2 are recommended for PM-10. However, where possible, particle size, gas-to-particle formation, and their effect on ambient concentrations may be considered. For point sources of small particles and for source-specific analyses of complicated sources, use the appropriate recommended steady-state plume dispersion model (subsection 4.2.2).

c. Receptor models have proven useful for helping validate emission inventories and for corroborating source-specific impacts estimated by dispersion models. The Chemical Mass Balance (CMB) model is useful for apportioning impacts from localized sources.<sup>42 43 44</sup> Other receptor models, e.g., the Positive Matrix Factorization (PMF) model<sup>45</sup> and Unmix,<sup>46</sup> which don't share some of CMB's constraints, have also been applied. In regulatory applications, dispersion models have been used in conjunction with receptor models to attribute source (or source category) contributions. Guidance is available for PM-10 sampling and analysis applicable to receptor modeling.<sup>47</sup>

d. Under certain conditions, recommended dispersion models may not be reliable. In such circumstances, the modeling approach

should be approved by the Regional Office on a case-by-case basis. Analyses involving model calculations for stagnation conditions should also be justified on a case-by-case basis (subsection 7.2.8).

e. Fugitive dust usually refers to dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. Reentrained dust is that which is put into the air by reason of vehicles driving over dirt roads (or dirty roads) and dusty areas. Such sources can be characterized as line, area or volume sources. Emission rates may be based on site specific data or values from the general literature. Fugitive emissions include the emissions resulting from the industrial process that are not captured and vented through a stack but may be released from various locations within the complex. In some unique cases a model developed specifically for the situation may be needed. Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, it is recommended that the proposed procedure be cleared by the Regional Office for each specific situation before the modeling exercise is begun.

### 5.2.3 Models for Carbon Monoxide

a. Guidance is available for analyzing CO impacts at roadway intersections.<sup>48</sup> The recommended screening model for such analyses is CAL3QHC.<sup>49 50</sup> This model combines CALINE3 (listed in Appendix A) with a traffic model to calculate delays and queues that occur at signalized intersections. The screening approach is described in reference 48; a refined approach may be considered on a case-by-case basis with CAL3QHCR.<sup>51</sup> The latest version of the MOBILE (mobile source emission factor) model should be used for emissions input to intersection models.

b. For analyses of highways characterized by uninterrupted traffic flows, CALINE3 is recommended, with emissions input from the latest version of the MOBILE model. A scientific review article for line source models is available.<sup>52</sup>

c. For urban area wide analyses of CO, an Eulerian grid model should be used. Information on SIP development and requirements for using such models can be found in several references.<sup>48 53 54 55</sup>

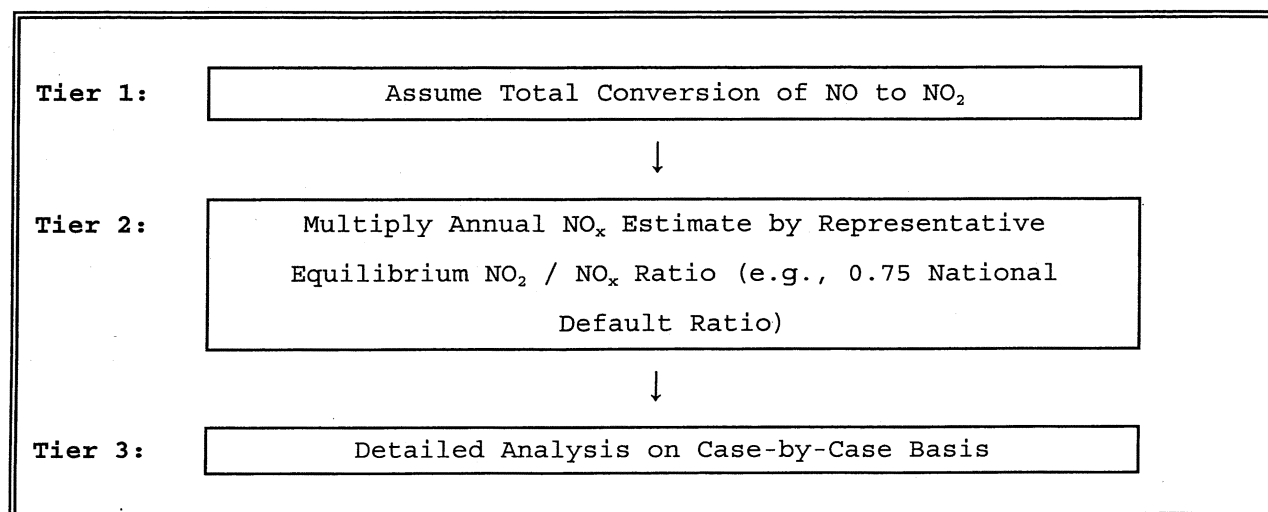
d. Where point sources of CO are of concern, they should be treated using the screening and refined techniques described in Section 4.

### 5.2.4 Models for Nitrogen Dioxide (Annual Average)

a. A tiered screening approach is recommended to obtain annual average estimates of NO<sub>2</sub> from point sources for New Source Review analysis, including PSD, and for SIP planning purposes. This multi-tiered approach is conceptually shown in Figure 5-1 and described in paragraphs b through d of this subsection:

#### Figure 5-1

Multi-tiered screening approach for Estimating Annual NO<sub>2</sub> Concentrations from Point Sources



b. For Tier 1 (the initial screen), use an appropriate model in subsection 4.2.2 to estimate the maximum annual average concentration and assume a total conversion of NO to NO<sub>2</sub>. If the concentration exceeds the NAAQS and/or PSD increments for NO<sub>2</sub>, proceed to the 2nd level screen.

c. For Tier 2 (2nd level) screening analysis, multiply the Tier 1 estimate(s) by an empirically derived NO<sub>2</sub>/NO<sub>x</sub> value of 0.75 (annual national default).<sup>56</sup> The reviewing agency may establish an alternative default NO<sub>2</sub>/NO<sub>x</sub> ratio based on ambient annual average NO<sub>2</sub> and annual average NO<sub>x</sub> data representative of area wide quasi-equilibrium conditions. Alternative default NO<sub>2</sub>/NO<sub>x</sub> ratios should be based on data satisfying quality assurance procedures that ensure data accuracy for both NO<sub>2</sub> and NO<sub>x</sub> within the typical range of measured values. In areas with relatively low NO<sub>x</sub> concentrations, the quality assurance procedures used to determine compliance with the NO<sub>2</sub> national ambient air quality standard may not be adequate. In addition, default NO<sub>2</sub>/NO<sub>x</sub> ratios, including the 0.75 national default value, can underestimate long range NO<sub>2</sub> impacts and should be used with caution in long range transport scenarios.

d. For Tier 3 (3rd level) analysis, a detailed screening method may be selected on a case-by-case basis. For point source modeling, detailed screening techniques such as the Ozone Limiting Method<sup>57</sup> may also be considered. Also, a site specific NO<sub>2</sub>/NO<sub>x</sub> ratio may be used as a detailed screening method if it meets the same restrictions as described for alternative default NO<sub>2</sub>/NO<sub>x</sub> ratios. Ambient NO<sub>x</sub> monitors used to develop a site specific ratio should be sited to obtain the NO<sub>2</sub> and NO<sub>x</sub> concentrations under quasi-equilibrium conditions. Data obtained from monitors sited at the maximum NO<sub>x</sub> impact site, as may be required in a PSD pre-construction monitoring program, likely reflect transitional NO<sub>x</sub> conditions. Therefore, NO<sub>x</sub> data from maximum impact sites may not be suitable for determining a site specific NO<sub>2</sub>/NO<sub>x</sub> ratio that is applicable for the entire modeling analysis. A site specific ratio derived from maximum impact data can only be used to estimate NO<sub>2</sub> impacts at receptors

located within the same distance of the source as the source-to-monitor distance.

e. In urban areas (subsection 7.2.3), a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, *i.e.*, minor point, area and mobile sources of NO<sub>x</sub>; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO<sub>x</sub> is emitted in the form of NO<sub>2</sub> and to use a model from Appendix A for nonreactive pollutants to estimate NO<sub>2</sub> concentrations. A more accurate estimate can be obtained by: (1) Calculating the annual average concentrations of NO<sub>x</sub> with an urban model, and (2) converting these estimates to NO<sub>2</sub> concentrations using an empirically derived annual NO<sub>2</sub>/NO<sub>x</sub> ratio. A value of 0.75 is recommended for this ratio. However, a spatially averaged alternative default annual NO<sub>2</sub>/NO<sub>x</sub> ratio may be determined from an existing air quality monitoring network and used in lieu of the 0.75 value if it is determined to be representative of prevailing ratios in the urban area by the reviewing agency. To ensure use of appropriate locally derived annual average NO<sub>2</sub>/NO<sub>x</sub> ratios, monitoring data under consideration should be limited to those collected at monitors meeting siting criteria defined in 40 CFR Part 58, Appendix D as representative of "neighborhood", "urban", or "regional" scales. Furthermore, the highest annual spatially averaged NO<sub>2</sub>/NO<sub>x</sub> ratio from the most recent 3 years of complete data should be used to foster conservatism in estimated impacts.

f. To demonstrate compliance with NO<sub>2</sub> PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO<sub>2</sub> concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid

square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources using an appropriate steady-state plume dispersion model (*e.g.*, CAL3QHCR; subsection 5.2.3).

g. More refined techniques to handle special circumstances may be considered on a case-by-case basis and agreement with the appropriate reviewing authority (paragraph 3.0(b)) should be obtained. Such techniques should consider individual quantities of NO and NO<sub>2</sub> emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO<sub>2</sub>. Where they are available, site specific data on the conversion of NO to NO<sub>2</sub> may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO<sub>x</sub> problem.

#### 5.2.5 Models for Lead

a. For major lead point sources, such as smelters, which contribute fugitive emissions and for which deposition is important, professional judgement should be used, and there should be coordination with the appropriate reviewing authority (paragraph 3.0(b)). To model an entire major urban area or to model areas without significant sources of lead emissions, as a minimum a proportional (rollback) model may be used for air quality analysis. The rollback philosophy assumes that measured pollutant concentrations are proportional to emissions. However, urban or other dispersion models are encouraged in these circumstances where the use of such models is feasible.

b. In modeling the effect of traditional line sources (such as a specific roadway or highway) on lead air quality, dispersion models applied for other pollutants can be used. Dispersion models such as CALINE3 and CAL3QHCR have been used for modeling carbon monoxide emissions from highways and intersections (subsection 5.2.3). Where there is a point source in the middle of a substantial road network, the lead concentrations that result from the road network should be treated as background (subsection 8.2); the point source and any nearby major roadways should be modeled

separately using the appropriate recommended steady-state plume dispersion model (subsection 4.2.2).

## 6.0 Other Model Requirements

### 6.1 Discussion

a. This section covers those cases where specific techniques have been developed for special regulatory programs. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available. No attempt has been made to provide a comprehensive discussion of each topic since the reference documents were designed to do that. This section will undergo periodic revision as new programs are added and new techniques are developed.

b. Other Federal agencies have also developed specific modeling approaches for their own regulatory or other requirements.<sup>58</sup> Although such regulatory requirements and manuals may have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the manual or directive.

c. The need to estimate impacts at distances greater than 50km (the nominal distance to which EPA considers most steady-state Gaussian plume models are applicable) is an important one especially when considering the effects from secondary pollutants. Unfortunately, models originally available to EPA had not undergone sufficient field evaluation to be recommended for general use. Data bases from field studies at mesoscale and long range transport distances were limited in detail. This limitation was a result of the expense to perform the field studies required to verify and improve mesoscale and long range transport models. Meteorological data adequate for generating three-dimensional wind fields were particularly sparse. Application of models to complicated terrain compounds the difficulty of making good assessments of long range transport impacts. EPA completed limited evaluation of several long range transport (LRT) models against two sets of field data and evaluated results.<sup>59</sup> Based on the results, EPA concluded that long range and mesoscale transport models were limited for regulatory use to a case-by-case basis. However a more recent series of comparisons has been completed for a new model, CALPUFF (Section A.3). Several of these field studies involved three-to-four hour releases of tracer gas sampled along arcs of receptors at distances greater than 50km downwind. In some cases, short-term concentration sampling was available, such that the transport of the tracer puff as it passed the arc could be monitored. Differences on the order of 10 to 20 degrees were found between the location of the simulated and observed center of mass of the tracer puff. Most of the simulated centerline concentration maxima along each arc were within a factor of two of those observed. It was concluded from these case studies that the CALPUFF dispersion model had performed in a reasonable manner, and had

no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300km.<sup>60</sup>

## 6.2 Recommendations

### 6.2.1 Visibility

a. Visibility in important natural areas (e.g., Federal Class I areas) is protected under a number of provisions of the Clean Air Act, including Sections 169A and 169B (addressing impacts primarily from existing sources) and Section 165 (new source review). Visibility impairment is caused by light scattering and light absorption associated with particles and gases in the atmosphere. In most areas of the country, light scattering by PM-2.5 is the most significant component of visibility impairment. The key components of PM-2.5 contributing to visibility impairment include sulfates, nitrates, organic carbon, elemental carbon, and crustal material.

b. The visibility regulations as promulgated in December 1980 (40 CFR 51.300-307) require States to mitigate visibility impairment, in any of the 156 mandatory Federal Class I areas, that is found to be "reasonably attributable" to a single source or a small group of sources. In 1985, EPA promulgated Federal Implementation Plans (FIPs) for several States without approved visibility provisions in their SIPs. The IMPROVE (Interagency Monitoring for Protected Visual Environments) monitoring network, a cooperative effort between EPA, the States, and Federal land management agencies, was established to implement the monitoring requirements in these FIPs. Data has been collected by the IMPROVE network since 1988.

c. In 1999, EPA issued revisions to the 1980 regulations to address visibility impairment in the form of regional haze, which is caused by numerous, diverse sources (e.g., stationary, mobile, and area sources) located across a broad region (40 CFR 51.308-309). The state of relevant scientific knowledge has expanded significantly since the Clean Air Act Amendments of 1977. A number of studies and reports<sup>61 62</sup> have concluded that long range transport (e.g., up to hundreds of kilometers) of fine particulate matter plays a significant role in visibility impairment across the country. Section 169A of the Act requires states to develop SIPs containing long-term strategies for remedying existing and preventing future visibility impairment in 156 mandatory Class I federal areas. In order to develop long-term strategies to address regional haze, many States will need to conduct regional-scale modeling of fine particulate concentrations and associated visibility impairment (e.g., light extinction and deciview metrics).

d. To calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions ("plume blight"), a screening model, VISCSCREEN, and guidance are available.<sup>63</sup> If a more comprehensive analysis is required, a refined model should be selected. The model selection (VISCSCREEN vs. PLUVUE II or some other refined model), procedures, and analyses should be determined in consultation with the appropriate reviewing

authority (paragraph 3.0(b)) and the affected Federal Land Manager (FLM). FLMs are responsible for determining whether there is an adverse effect by a plume on a Class I area.

e. CALPUFF (Section A.3) may be applied when assessment is needed of reasonably attributable haze impairment or atmospheric deposition due to one or a small group of sources. This situation may involve more sources and larger modeling domains than that to which VISCSCREEN ideally may be applied. The procedures and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s).

f. Regional scale models are used by EPA to develop and evaluate national policy and assist State and local control agencies. Two such models which can be used to assess visibility impacts from source emissions are Models-3/CMAQ<sup>38</sup> and REMSAD.<sup>41</sup> Model users should consult with the appropriate reviewing authority (paragraph 3.0(b)), which in this instance would include FLMs.

### 6.2.2 Good Engineering Practice Stack Height

a. The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emission limitations by 40 CFR 51.118 and 40 CFR 51.164. The definitions of GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an example of applying those techniques are found in several references<sup>64 65 66 67</sup>, which provide a great deal of additional information for evaluating and describing building cavity and wake effects.

b. If stacks for new or existing major sources are found to be less than the height defined by EPA's refined formula for determining GEP height, then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. The EPA refined formula height is defined as  $H + 1.5L$  (see reference 66). Detailed downwash screening procedures<sup>24</sup> for both the cavity and wake regions should be followed. If more refined concentration estimates are required, the recommended steady-state plume dispersion model in subsection 4.2.2 contains algorithms for building wake calculations and should be used.

### 6.2.3 Long Range Transport (LRT) (*i.e.*, Beyond 50km)

a. Section 165(d) of the Clean Air Act requires that suspected adverse impacts on PSD Class I areas be determined. However, 50km is the useful distance to which most steady-state Gaussian plume models are considered accurate for setting emission limits. Since in many cases PSD analyses show that Class I areas may be threatened at distances greater than 50km from new sources, some procedure is needed to (1) determine if an adverse impact will occur, and (2) identify the model to be used in setting an emission limit if the Class I increments are threatened. In addition to the situations just described, there are certain



applications containing a mixture of both long range and short range source-receptor relationships in a large modeled domain (e.g., several industrialized areas located along a river or valley). Historically, these applications have presented considerable difficulty to an analyst if impacts from sources having transport distances greater than 50km significantly contributed to the design concentrations. To properly analyze applications of this type, a modeling approach is needed which has the capability of combining, in a consistent manner, impacts involving both short and long range transport. The CALPUFF modeling system, listed in Appendix A, has been designed to accommodate both the Class I area LRT situation and the large modeling domain situation. Given the judgement and refinement involved, conducting a LRT modeling assessment will require significant consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s). The FLM has an affirmative responsibility to protect air quality related values (AQRVs) that may be affected, and to provide the appropriate procedures and analysis techniques. Where there is no increment violation, the ultimate decision on whether a Class I area is adversely affected is the responsibility of the appropriate reviewing authority (Section 165(d)(2)(C)(ii) of the Clean Air Act), taking into consideration any information on the impacts on AQRVs provided by the FLM. According to Section 165(d)(2)(C)(iii) of the Clean Air Act, if there is a Class I increment violation, the source must demonstrate to the satisfaction of the FLM that the emissions from the source will have no adverse impact on the AQRVs.

b. If LRT is determined to be important, then refined estimates utilizing the CALPUFF modeling system should be obtained. A screening approach<sup>60 68</sup> is also available for use on a case-by-case basis that generally provides concentrations that are higher than those obtained using refined characterizations of the meteorological conditions. The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for refined analyses are discussed in paragraph 8.3.1.2(d). Additional information on applying this model is contained in Appendix A. To facilitate use of complex air quality and meteorological modeling systems, a written protocol approved by the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s) may be considered for developing consensus in the methods and procedures to be followed.

#### 6.2.4 Modeling Guidance for Other Governmental Programs

a. When using the models recommended or discussed in the *Guideline* in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate Federal or State agency to ensure the proper application and use of the models. For modeling associated with PSD permit applications that involve a Class I area, the appropriate Federal Land Manager should be consulted on all modeling questions.

b. The Offshore and Coastal Dispersion (OCD) model, described in Appendix A, was developed by the Minerals Management Service and is recommended for estimating air quality impact from offshore sources on onshore, flat terrain areas. The OCD model is not recommended for use in air quality impact assessments for onshore sources. Sources located on or just inland of a shoreline where fumigation is expected should be treated in accordance with subsection 7.2.8.

c. The latest version of the Emissions and Dispersion Modeling System (EDMS), was developed and is supported by the Federal Aviation Administration (FAA), and is appropriate for air quality assessment of primary pollutant impacts at airports or air bases. EDMS has adopted AERMOD for treating dispersion. Application of EDMS is intended for estimating the collective impact of changes in aircraft operations, point source, and mobile source emissions on pollutant concentrations. It is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are unrelated to airport operations. If changes in other than aircraft operations are associated with analyses, a model recommended in Chapter 4 or 5 should be used. The latest version of EDMS may be obtained from FAA at its Web site: <http://www.aee.faa.gov/emissions/edms/edmshome.htm>.

### 7.0 General Modeling Considerations

#### 7.1 Discussion

a. This section contains recommendations concerning a number of different issues not explicitly covered in other sections of this guide. The topics covered here are not specific to any one program or modeling area but are common to nearly all modeling analyses for criteria pollutants.

#### 7.2 Recommendations

##### 7.2.1 Design Concentrations (See Also Subsection 10.2.3.1)

##### 7.2.1.1 Design Concentrations for SO<sub>2</sub>, PM-10, CO, Pb, and NO<sub>2</sub>

a. An air quality analysis for SO<sub>2</sub>, PM-10, CO, Pb, and NO<sub>2</sub> is required to determine if the source will (1) cause a violation of the NAAQS, or (2) cause or contribute to air quality deterioration greater than the specified allowable PSD increment. For the former, background concentration (subsection 8.2) should be added to the estimated impact of the source to determine the design concentration. For the latter, the design concentration includes impact from all increment consuming sources.

b. If the air quality analyses are conducted using the period of meteorological input data recommended in subsection 8.3.1.2 (e.g., 5 years of National Weather Service (NWS) data or at least 1 year of site specific data; subsection 8.3.3), then the design concentration based on the highest, second-highest short term concentration over the entire receptor network for each year modeled or the highest long term average (whichever is controlling) should be used to determine emission limitations to assess compliance with the NAAQS and PSD

increments. For the 24-hour PM-10 NAAQS (which is a probabilistic standard)—when multiple years are modeled, they collectively represent a single period. Thus, if 5 years of NWS data are modeled, then the highest sixth highest concentration for the whole period becomes the design value. And in general, when n years are modeled, the (n+1)th highest concentration over the n-year period is the design value, since this represents an average or expected exceedance rate of one per year.

c. When sufficient and representative data exist for less than a 5-year period from a nearby NWS site, or when site specific data have been collected for less than a full continuous year, or when it has been determined that the site specific data may not be temporally representative (subsection 8.3.3), then the highest concentration estimate should be considered the design value. This is because the length of the data record may be too short to assure that the conditions producing worst-case estimates have been adequately sampled. The highest value is then a surrogate for the concentration that is not to be exceeded more than once per year (the wording of the deterministic standards). Also, the highest concentration should be used whenever selected worst-case conditions are input to a screening technique, as described in EPA guidance.<sup>24</sup>

d. If the controlling concentration is an annual average value and multiple years of data (site specific or NWS) are used, then the design value is the highest of the annual averages calculated for the individual years. If the controlling concentration is a quarterly average and multiple years are used, then the highest individual quarterly average should be considered the design value.

e. As long a period of record as possible should be used in making estimates to determine design values and PSD increments. If more than 1 year of site specific data is available, it should be used.

##### 7.2.1.2 Design Concentrations for O<sub>3</sub> and PM-2.5

a. Guidance and specific instructions for the determination of the 1-hr and 8-hr design concentrations for ozone are provided in Appendix H and I (respectively) of reference 4. Appendix H explains how to determine when the expected number of days per calendar year with maximum hourly concentrations above the NAAQS is equal to or less than 1. Appendix I explains the data handling conventions and computations necessary for determining whether the 8-hour primary and secondary NAAQS are met at an ambient monitoring site. For PM-2.5, Appendix N of reference 4, and supplementary guidance,<sup>69</sup> explain the data handling conventions and computations necessary for determining when the annual and 24-hour primary and secondary NAAQS are met. For all SIP revisions the user should check with the Regional Office to obtain the most recent guidance documents and policy memoranda concerning the pollutant in question. There are currently no PSD increments for O<sub>3</sub> and PM-2.5.

#### 7.2.2 Critical Receptor Sites

a. Receptor sites for refined modeling should be utilized in sufficient detail to



estimate the highest concentrations and possible violations of a NAAQS or a PSD increment. In designing a receptor network, the emphasis should be placed on receptor resolution and location, not total number of receptors. The selection of receptor sites should be a case-by-case determination taking into consideration the topography, the climatology, monitor sites, and the results of the initial screening procedure.

#### 7.2.3 Dispersion Coefficients

a. Steady-state Gaussian plume models used in most applications should employ dispersion coefficients consistent with those contained in the preferred models in Appendix A. Factors such as averaging time, urban/rural surroundings (*see* paragraphs (b)–(f) of this subsection), and type of source (point vs. line) may dictate the selection of specific coefficients. Coefficients used in some Appendix A models are identical to, or at least based on, Pasquill-Gifford coefficients<sup>70</sup> in rural areas and McElroy-Pooler<sup>71</sup> coefficients in urban areas. A key feature of AERMOD's formulation is the use of directly observed variables of the boundary layer to parameterize dispersion.<sup>22</sup>

b. The selection of either rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin<sup>72</sup> and briefly described in paragraphs (c)–(f) of this subsection. These include a land use classification procedure or a population based procedure to determine whether the character of an area is primarily urban or rural.

c. Land Use Procedure: (1) Classify the land use within the total area,  $A_o$ , circumscribed by a 3km radius circle about the source using the meteorological land use typing scheme proposed by Auer<sup>73</sup>; (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of  $A_o$ , use urban dispersion coefficients; otherwise, use appropriate rural dispersion coefficients.

d. Population Density Procedure: (1) Compute the average population density,  $\bar{p}$  per square kilometer with  $A_o$  as defined above; (2) If  $\bar{p}$  is greater than 750 people/km<sup>2</sup>, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients.

e. Of the two methods, the land use procedure is considered more definitive. Population density should be used with caution and should not be applied to highly industrialized areas where the population density may be low and thus a rural classification would be indicated, but the area is sufficiently built-up so that the urban land use criteria would be satisfied. In this case, the classification should already be "urban" and urban dispersion parameters should be used.

f. Sources located in an area defined as urban should be modeled using urban dispersion parameters. Sources located in areas defined as rural should be modeled using the rural dispersion parameters. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban.

g. Buoyancy-induced dispersion (BID), as identified by Pasquill<sup>74</sup>, is included in the preferred models and should be used where

buoyant sources, *e.g.*, those involving fuel combustion, are involved.

#### 7.2.4 Stability Categories

a. The Pasquill approach to classifying stability is commonly used in preferred models (Appendix A). The Pasquill method, as modified by Turner<sup>75</sup>, was developed for use with commonly observed meteorological data from the National Weather Service and is based on cloud cover, insolation and wind speed.

b. Procedures to determine Pasquill stability categories from other than NWS data are found in subsection 8.3. Any other method to determine Pasquill stability categories must be justified on a case-by-case basis.

c. For a given model application where stability categories are the basis for selecting dispersion coefficients, both  $\sigma_y$  and  $\sigma_z$  should be determined from the same stability category. "Split sigmas" in that instance are not recommended. Sector averaging, which eliminates the  $\sigma_y$  term, is commonly acceptable in complex terrain screening methods.

d. AERMOD, also a preferred model in Appendix A, uses a planetary boundary layer scaling parameter to characterize stability.<sup>22</sup> This approach represents a departure from the discrete, hourly stability categories estimated under the Pasquill-Gifford-Turner scheme.

#### 7.2.5 Plume Rise

a. The plume rise methods of Briggs<sup>76 77</sup> are incorporated in many of the preferred models and are recommended for use in many modeling applications. In AERMOD,<sup>22</sup> for the stable boundary layer, plume rise is estimated using an iterative approach, similar to that in the CTDMPLUS model. In the convective boundary layer, plume rise is superposed on the displacements by random convective velocities.<sup>78</sup> In AERMOD, plume rise is computed using the methods of Briggs excepting cases involving building downwash, in which a numerical solution of the mass, energy, and momentum conservation laws is performed.<sup>23</sup> No explicit provisions in these models are made for multistack plume rise enhancement or the handling of such special plumes as flares; these problems should be considered on a case-by-case basis.

b. Gradual plume rise is generally recommended where its use is appropriate: (1) In AERMOD; (2) in complex terrain screening procedures to determine close-in impacts and (3) when calculating the effects of building wakes. The building wake algorithm in AERMOD incorporates and exercises the thermodynamically based gradual plume rise calculations as described in (a) above. If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used. Plumes captured by the near wake are re-emitted to the far wake as a ground-level volume source.

c. Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs<sup>77</sup>

is the recommended technique for this situation and is used in preferred models for point sources.

#### 7.2.6 Chemical Transformation

a. The chemical transformation of SO<sub>2</sub> emitted from point sources or single industrial plants in rural areas is generally assumed to be relatively unimportant to the estimation of maximum concentrations when travel time is limited to a few hours. However, in urban areas, where synergistic effects among pollutants are of considerable consequence, chemical transformation rates may be of concern. In urban area applications, a half-life of 4 hours<sup>75</sup> may be applied to the analysis of SO<sub>2</sub> emissions. Calculations of transformation coefficients from site specific studies can be used to define a "half-life" to be used in a steady-state Gaussian plume model with any travel time, or in any application, if appropriate documentation is provided. Such conversion factors for pollutant half-life should not be used with screening analyses.

b. Use of models incorporating complex chemical mechanisms should be considered only on a case-by-case basis with proper demonstration of applicability. These are generally regional models not designed for the evaluation of individual sources but used primarily for region-wide evaluations. Visibility models also incorporate chemical transformation mechanisms which are an integral part of the visibility model itself and should be used in visibility assessments.

#### 7.2.7 Gravitational Settling and Deposition

a. An "infinite half-life" should be used for estimates of particle concentrations when steady-state Gaussian plume models containing only exponential decay terms for treating settling and deposition are used.

b. Gravitational settling and deposition may be directly included in a model if either is a significant factor. When particulate matter sources can be quantified and settling and dry deposition are problems, professional judgement should be used, and there should be coordination with the appropriate reviewing authority (paragraph 3.0(b)).

#### 7.2.8 Complex Winds

a. *Inhomogeneous Local Winds.* In many parts of the United States, the ground is neither flat nor is the ground cover (or land use) uniform. These geographical variations can generate local winds and circulations, and modify the prevailing ambient winds and circulations. Geographic effects are most apparent when the ambient winds are light or calm.<sup>79</sup> In general these geographically induced wind circulation effects are named after the source location of the winds, *e.g.*, lake and sea breezes, and mountain and valley winds. In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characterization of the winds is a balance of various forces, such that the assumptions of steady-state straight-line transport both in time and space are inappropriate. In the special cases described, the CALPUFF modeling system (described in Appendix A) may be applied on a case-by-case basis for air quality estimates in such complex non-

steady-state meteorological conditions. The purpose of choosing a modeling system like CALPUFF is to fully treat the time and space variations of meteorology effects on transport and dispersion. The setup and application of the model should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) consistent with limitations of paragraph 3.2.2(e). The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for these situations are discussed in paragraphs 8.3.1.2(d) and 8.3.1.2(f). Examples of inhomogeneous winds include, but aren't limited to, situations described in the following paragraphs (i)—(iii):

i. *Inversion Breakup Fumigation.* Inversion breakup fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures<sup>24</sup> that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

ii. *Shoreline Fumigation.* Fumigation can be an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. The Shoreline Dispersion Model (SDM) listed on EPA's Internet SCRAM Web site (subsection 2.3) may be applied on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.<sup>80</sup> Information on the results of EPA's evaluation of this model together with other coastal fumigation models is available.<sup>81</sup> Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

iii. *Stagnation.* Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations. If point sources are of interest, users should note the guidance provided for CALPUFF in paragraph (a) of this subsection. Selection of the appropriate model for applications where stagnation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

## 7.2.9 Calibration of Models

a. Calibration of models is not common practice and is subject to much error and misunderstanding. There have been attempts by some to compare model estimates and measurements on an event-by-event basis and then to calibrate a model with results of that comparison. This approach is severely limited by uncertainties in both source and meteorological data and therefore it is difficult to precisely estimate the concentration at an exact location for a specific increment of time. Such uncertainties make calibration of models of questionable benefit. Therefore, model calibration is unacceptable.

## 8.0 Model Input Data

a. Data bases and related procedures for estimating input parameters are an integral part of the modeling procedure. The most appropriate data available should always be selected for use in modeling analyses. Concentrations can vary widely depending on the source data or meteorological data used. Input data are a major source of uncertainties in any modeling analysis. This section attempts to minimize the uncertainty associated with data base selection and use by identifying requirements for data used in modeling. A checklist of input data requirements for modeling analyses is posted on EPA's Internet SCRAM Web site (subsection 2.3). More specific data requirements and the format required for the individual models are described in detail in the users' guide for each model.

### 8.1 Source Data

#### 8.1.1 Discussion

a. Sources of pollutants can be classified as point, line and area/volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are roadways and streets along which there are well-defined movements of motor vehicles, but they may be lines of roof vents or stacks such as in aluminum refineries. Area and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square.

b. Emission factors are compiled in an EPA publication commonly known as AP-42<sup>82</sup>; an indication of the quality and amount of data on which many of the factors are based is also provided. Other information concerning emissions is available in EPA publications relating to specific source categories. The appropriate reviewing authority (paragraph 3.0(b)) should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

#### 8.1.2 Recommendations

a. For point source applications the load or operating condition that causes maximum ground-level concentrations should be

established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the standards or PSD increments, this load<sup>a</sup> should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. A range of operating conditions should be considered in screening analyses; the load causing the highest concentration, in addition to the design load, should be included in refined modeling. For a steam power plant, the following (b–h) is typical of the kind of data on source characteristics and operating conditions that may be needed. Generally, input data requirements for air quality models necessitate the use of metric units; where English units are common for engineering usage, a conversion to metric is required.

b. *Plant layout.* The connection scheme between boilers and stacks, and the distance and direction between stacks, building parameters (length, width, height, location and orientation relative to stacks) for plant structures which house boilers, control equipment, and surrounding buildings within a distance of approximately five stack heights.

c. *Stack parameters.* For all stacks, the stack height and inside diameter (meters), and the temperature (K) and volume flow rate (actual cubic meters per second) or exit gas velocity (meters per second) for operation at 100 percent, 75 percent and 50 percent load.

d. *Boiler size.* For all boilers, the associated megawatts, 10<sup>6</sup> BTU/hr, and pounds of steam per hour, and the design and/or actual fuel consumption rate for 100 percent load for coal (tons/hour), oil (barrels/hour), and natural gas (thousand cubic feet/hour).

e. *Boiler parameters.* For all boilers, the percent excess air used, the boiler type (e.g., wet bottom, cyclone, etc.), and the type of firing (e.g., pulverized coal, front firing, etc.).

f. *Operating conditions.* For all boilers, the type, amount and pollutant contents of fuel, the total hours of boiler operation and the boiler capacity factor during the year, and the percent load for peak conditions.

g. *Pollution control equipment parameters.* For each boiler served and each pollutant affected, the type of emission control equipment, the year of its installation, its design efficiency and mass emission rate, the date of the last test and the tested efficiency, the number of hours of operation during the latest year, and the best engineering estimate of its projected efficiency if used in conjunction with coal combustion; data for any anticipated modifications or additions.

h. *Data for new boilers or stacks.* For all new boilers and stacks under construction

<sup>a</sup> Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact.

and for all planned modifications to existing boilers or stacks, the scheduled date of completion, and the data or best estimates available for items (b) through (g) of this subsection following completion of construction or modification.

i. In stationary point source applications for compliance with short term ambient standards, SIP control strategies should be tested using the emission input shown on Table 8-1. When using a refined model, sources should be modeled sequentially with these loads for every hour of the year. To evaluate SIPs for compliance with quarterly and annual standards, emission input data shown in Table 8-1 should again be used. Emissions from area sources should generally be based on annual average conditions. The source input information in each model user's guide should be carefully consulted and the checklist (paragraph 8.0(a)) should

also be consulted for other possible emission data that could be helpful. NAAQS compliance demonstrations in a PSD analysis should follow the emission input data shown in Table 8-2. For purposes of emissions trading, new source review and demonstrations, refer to current EPA policy and guidance to establish input data.

j. Line source modeling of streets and highways requires data on the width of the roadway and the median strip, the types and amounts of pollutant emissions, the number of lanes, the emissions from each lane and the height of emissions. The location of the ends of the straight roadway segments should be specified by appropriate grid coordinates. Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.

k. The impact of growth on emissions should be considered in all modeling analyses covering existing sources. Increases in emissions due to planned expansion or planned fuel switches should be identified. Increases in emissions at individual sources that may be associated with a general industrial/commercial/residential expansion in multi-source urban areas should also be treated. For new sources the impact of growth on emissions should generally be considered for the period prior to the start-up date for the source. Such changes in emissions should treat increased area source emissions, changes in existing point source emissions which were not subject to preconstruction review, and emissions due to sources with permits to construct that have not yet started operation.

TABLE 8-1.—MODEL EMISSION INPUT DATA FOR POINT SOURCES <sup>1</sup>

Averaging time	Emission limit (#/MMBtu) <sup>2</sup>	×	Operating level (MMBtu/hr) <sup>2</sup>	×	Operating factor (e.g., hr/yr, hr/day)
<b>Stationary Point Source(s) Subject to SIP Emission Limit(s) Evaluation for Compliance with Ambient Standards (Including Areawide Demonstrations)</b>					
Annual & quarterly .....	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over most recent 2 years. <sup>3</sup>
Short term .....	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition. <sup>4</sup>		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological data base). <sup>5</sup>
<b>Nearby Source(s)<sup>6 7</sup></b>					
Same input requirements as for stationary point source(s) above.					
<b>Other Source(s)<sup>7</sup></b>					
If modeled (subsection 8.2.3), input data requirements are defined below.					
Annual & quarterly .....	Maximum allowable emission limit or federally enforceable permit limit. <sup>6</sup>		Annual level when actually operating, averaged over the most recent 2 years. <sup>3</sup>		Actual operating factor averaged over the most recent 2 years. <sup>3</sup>
Short term .....	Maximum allowable emission limit or federally enforceable permit limit. <sup>6</sup>		Annual level when actually operating, averaged over the most recent 2 years. <sup>3</sup>		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological data base). <sup>5</sup>

<sup>1</sup> The model input data requirements shown on this table apply to stationary source control strategies for STATE IMPLEMENTATION PLANS. For purposes of emissions trading, new source review, or prevention of significant deterioration, other model input criteria may apply. Refer to the policy and guidance for these programs to establish the input data.

<sup>2</sup> Terminology applicable to fuel burning sources; analogous terminology (e.g., #/throughput) may be used for other types of sources.

<sup>3</sup> Unless it is determined that this period is not representative.

<sup>4</sup> Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

<sup>5</sup> If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.)

<sup>6</sup> See paragraph 8.2.3(c).

<sup>7</sup> See paragraph 8.2.3(d).

TABLE 8-2.—POINT SOURCE MODEL EMISSION INPUT DATA FOR NAAQS COMPLIANCE IN PSD DEMONSTRATIONS

Averaging time	Emission limit (#/MMBtu) <sup>1</sup>	×	Operating level (MMBtu/hr) <sup>1</sup>	×	Operating factor (e.g., hr/yr, hr/day)
<b>Proposed Major New or Modified Source</b>					
Annual & quarterly .....	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.		Continuous operation (i.e., 8760 hours). <sup>2</sup>
Short term (≤ 24 hours) .....	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition. <sup>3</sup>		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological data base). <sup>2</sup>
<b>Nearby Source(s)<sup>4 6</sup></b>					
Annual & quarterly .....	Maximum allowable emission limit or federally enforceable permit limit. <sup>5</sup>		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over the most recent 2 years. <sup>7 8</sup>
Short term (≤ 24 hours) .....	Maximum allowable emission limit or federally enforceable permit limit. <sup>5</sup>		Actual or design capacity (whichever is greater), or federally enforceable permit condition. <sup>3</sup>		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological data base). <sup>2</sup>
<b>Other Source(s)<sup>6 9</sup></b>					
Annual & quarterly .....	Maximum allowable emission limit or federally enforceable permit limit. <sup>5</sup>		Annual level when actually operating, averaged over the most recent 2 years. <sup>7</sup>		Actual operating factor averaged over the most recent 2 years. <sup>7 8</sup>
Short term (≤ 24 hours) .....	Maximum allowable emission limit or federally enforceable permit limit. <sup>5</sup>		Annual level when actually operating, averaged over the most recent 2 years. <sup>7</sup>		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological data base). <sup>2</sup>

<sup>1</sup> Terminology applicable to fuel burning sources; analogous terminology (e.g., #/throughput) may be used for other types of sources.

<sup>2</sup> If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.

<sup>3</sup> Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

<sup>4</sup> Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.

<sup>5</sup> See paragraph 8.2.3(c).

<sup>6</sup> See paragraph 8.2.3(d).

<sup>7</sup> Unless it is determined that this period is not representative.

<sup>8</sup> For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (i.e., 8760) should be used.

<sup>9</sup> Generally, the ambient impacts from non-nearby (background) sources can be represented by air quality data unless adequate data do not exist.

## 8.2 Background Concentrations

### 8.2.1 Discussion

a. Background concentrations are an essential part of the total air quality concentration to be considered in determining source impacts. Background air quality includes pollutant concentrations due to: (1) Natural sources; (2) nearby sources other than the one(s) currently under consideration; and (3) unidentified sources.

b. Typically, air quality data should be used to establish background concentrations in the vicinity of the source(s) under consideration. The monitoring network used for background determinations should conform to the same quality assurance and other requirements as those networks established for PSD purposes.<sup>83</sup> An appropriate data validation procedure should be applied to the data prior to use.

c. If the source is not isolated, it may be necessary to use a multi-source model to establish the impact of nearby sources. Since sources don't typically operate at their maximum allowable capacity (which may include the use of "dirtier" fuels), modeling is necessary to express the potential contribution of background sources, and this impact would not be captured via monitoring. Background concentrations should be determined for each critical (concentration) averaging time.

### 8.2.2 Recommendations (Isolated Single Source)

a. Two options (paragraph (b) or (c) of this section) are available to determine the background concentration near isolated sources.

b. Use air quality data collected in the vicinity of the source to determine the

background concentration for the averaging times of concern. Determine the mean background concentration at each monitor by excluding values when the source in question is impacting the monitor. The mean annual background is the average of the annual concentrations so determined at each monitor. For shorter averaging periods, the meteorological conditions accompanying the concentrations of concern should be identified. Concentrations for meteorological conditions of concern, at monitors not impacted by the source in question, should be averaged for each separate averaging time to determine the average background value. Monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact. One hour concentrations may be added and averaged to determine longer averaging periods.

c. If there are no monitors located in the vicinity of the source, a "regional site" may be used to determine background. A "regional site" is one that is located away from the area of interest but is impacted by similar natural and distant man-made sources.

### 8.2.3 Recommendations (Multi-Source Areas)

a. In multi-source areas, two components of background should be determined: contributions from nearby sources and contributions from other sources.

b. *Nearby Sources:* All sources expected to cause a significant concentration gradient in the vicinity of the source or sources under consideration for emission limit(s) should be explicitly modeled. The number of such sources is expected to be small except in unusual situations. Owing to both the uniqueness of each modeling situation and the large number of variables involved in identifying nearby sources, no attempt is made here to comprehensively define this term. Rather, identification of nearby sources calls for the exercise of professional judgement by the appropriate reviewing authority (paragraph 3.0(b)). This guidance is not intended to alter the exercise of that judgement or to comprehensively define which sources are nearby sources.

c. For compliance with the short-term and annual ambient standards, the nearby sources as well as the primary source(s) should be evaluated using an appropriate Appendix A model with the emission input data shown in Table 8-1 or 8-2. When modeling a nearby source that does not have a permit and the emission limit contained in the SIP for a particular source category is greater than the emissions possible given the source's maximum physical capacity to emit, the "maximum allowable emission limit" for such a nearby source may be calculated as the emission rate representative of the nearby source's maximum physical capacity to emit, considering its design specifications and allowable fuels and process materials. However, the burden is on the permit applicant to sufficiently document what the maximum physical capacity to emit is for such a nearby source.

d. It is appropriate to model nearby sources only during those times when they, by their nature, operate at the same time as the primary source(s) being modeled. Where a primary source believes that a nearby source does not, by its nature, operate at the same time as the primary source being modeled, the burden is on the primary source to demonstrate to the satisfaction of the appropriate reviewing authority (paragraph 3.0(b)) that this is, in fact, the case. Whether or not the primary source has adequately demonstrated that fact is a matter of professional judgement left to the discretion of the appropriate reviewing authority. The following examples illustrate two cases in which a nearby source may be shown not to operate at the same time as the primary source(s) being modeled. Some sources are only used during certain seasons of the year. Those sources would not be modeled as nearby sources during times in which they do not operate. Similarly, emergency backup generators that never operate simultaneously

with the sources that they back up would not be modeled as nearby sources. To reiterate, in these examples and other appropriate cases, the burden is on the primary source being modeled to make the appropriate demonstration to the satisfaction of the appropriate reviewing authority.

e. The impact of the nearby sources should be examined at locations where interactions between the plume of the point source under consideration and those of nearby sources (plus natural background) can occur. Significant locations include: (1) the area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. These locations may be identified through trial and error analyses.

f. *Other Sources:* That portion of the background attributable to all other sources (e.g., natural sources, minor sources and distant major sources) should be determined by the procedures found in subsection 89.2.2 or by application of a model using Table 8-1 or 8-2.

### 8.3 Meteorological Input Data

a. The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the data is dependent on: (1) The proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions. Where appropriate, data representativeness should be viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and three dimensional meteorological fields, as described in paragraphs (c) and (d) below.

b. Model input data are normally obtained either from the National Weather Service or as part of a site specific measurement program. Local universities, Federal Aviation Administration (FAA), military stations, industry and pollution control agencies may also be sources of such data. Some recommendations for the use of each type of data are included in this subsection.

c. Regulatory application of AERMOD requires careful consideration of minimum data for input to AERMET. Data representativeness, in the case of AERMOD, means utilizing data of an appropriate type for constructing realistic boundary layer profiles. Of paramount importance is the requirement that all meteorological data used as input to AERMOD must be both laterally and vertically representative of the transport and dispersion within the analysis domain. Where surface conditions vary significantly over the analysis domain, the emphasis in

assessing representativeness should be given to adequate characterization of transport and dispersion between the source(s) of concern and areas where maximum design concentrations are anticipated to occur. The representativeness of data that were collected off-site should be judged, in part, by comparing the surface characteristics in the vicinity of the meteorological monitoring site with the surface characteristics that generally describe the analysis domain. The surface characteristics input to AERMET should be based on the topographic conditions in the vicinity of the meteorological tower. Furthermore, since the spatial scope of each variable could be different, representativeness should be judged for each variable separately. For example, for a variable such as wind direction, the data may need to be collected very near plume height to be adequately representative, whereas, for a variable such as temperature, data from a station several kilometers away from the source may in some cases be considered to be adequately representative.

d. For long range transport modeling assessments (subsection 6.2.3) or for assessments where the transport winds are complex and the application involves a non-steady-state dispersion model (subsection 7.2.8), use of output from prognostic mesoscale meteorological models is encouraged.<sup>84 85 86</sup> Some diagnostic meteorological processors are designed to appropriately blend available NWS comparable meteorological observations, local site specific meteorological observations, and prognostic mesoscale meteorological data, using empirical relationships, to diagnostically adjust the wind field for mesoscale and local-scale effects. These diagnostic adjustments can sometimes be improved through the use of strategically placed site specific meteorological observations. The placement of these special meteorological observations (often more than one location is needed) involves expert judgement, and is specific to the terrain and land use of the modeling domain. Acceptance for use of output from prognostic mesoscale meteorological models is contingent on concurrence by the appropriate reviewing authorities (paragraph 3.0(b)) that the data are of acceptable quality, which can be demonstrated through statistical comparisons with observations of winds aloft and at the surface at several appropriate locations.

#### 8.3.1 Length of Record of Meteorological Data

##### 8.3.1.1 Discussion

a. The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The trend toward statistically based standards suggests a need for all meteorological conditions to be adequately represented in the data set selected for model input. The number of years of record needed to obtain a stable distribution of conditions depends on the variable being measured and has been estimated by Landsberg and Jacobs<sup>87</sup> for various parameters. Although that study indicates in excess of 10 years may be

required to achieve stability in the frequency distributions of some meteorological variables, such long periods are not reasonable for model input data. This is due in part to the fact that hourly data in model input format are frequently not available for such periods and that hourly calculations of concentration for long periods may be prohibitively expensive. Another study<sup>88</sup> compared various periods from a 17-year data set to determine the minimum number of years of data needed to approximate the concentrations modeled with a 17-year period of meteorological data from one station. This study indicated that the variability of model estimates due to the meteorological data input was adequately reduced if a 5-year period of record of meteorological input was used.

#### 8.3.1.2 Recommendations

a. Five years of representative meteorological data should be used when estimating concentrations with an air quality model. Consecutive years from the most recent, readily available 5-year period are preferred. The meteorological data should be *adequately representative*, and may be site specific or from a nearby NWS station. Where professional judgment indicates NWS-collected ASOS (automated surface observing stations) data are inadequate {for cloud cover observations}, the most recent 5 years of NWS data that are observer-based may be considered for use.

b. The use of 5 years of NWS meteorological data or at least 1 year of site specific data is required. If one year or more (including partial years), up to five years, of site specific data is available, these data are preferred for use in air quality analyses. Such data should have been subjected to quality assurance procedures as described in subsection 8.3.3.2.

c. For permitted sources whose emission limitations are based on a specific year of meteorological data, that year should be added to any longer period being used (*e.g.*, 5 years of NWS data) when modeling the facility at a later time.

d. For LRT situations (subsection 6.2.3) and for complex wind situations (paragraph 7.2.8(a)), if only NWS or comparable standard meteorological observations are employed, five years of meteorological data (within and near the modeling domain) should be used. Consecutive years from the most recent, readily available 5-year period are preferred. Less than five, but at least three, years of meteorological data (need not be consecutive) may be used if mesoscale meteorological fields are available, as discussed in paragraph 8.3(d). These mesoscale meteorological fields should be used in conjunction with available standard NWS or comparable meteorological observations within and near the modeling domain.

e. For solely LRT applications (subsection 6.2.3), if site specific meteorological data are available, these data may be helpful when used in conjunction with available standard NWS or comparable observations and mesoscale meteorological fields as described in paragraph 8.3.1.2(d).

f. For complex wind situations (paragraph 7.2.8(a)) where site specific meteorological

data are being relied upon as the basis for characterizing the meteorological conditions, a data base of at least 1 full-year of meteorological data is required. If more data are available, they should be used. Site specific meteorological data may have to be collected at multiple locations. Such data should have been subjected to quality assurance procedures as described in paragraph 8.3.3.2(a), and should be reviewed for spatial and temporal representativeness.

#### 8.3.2 National Weather Service Data

##### 8.3.2.1 Discussion

a. The NWS meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables, methods have been developed and successfully used to translate the basic NWS data to the needed model input. Site specific measurements of model input parameters have been made for many modeling studies, and those methods and techniques are becoming more widely applied, especially in situations such as complex terrain applications, where available NWS data are not adequately representative. However, there are many model applications where NWS data are adequately representative, and the applications still rely heavily on the NWS data.

b. Many models use the standard hourly weather observations available from the National Climatic Data Center (NCDC). These observations are then preprocessed before they can be used in the models.

##### 8.3.2.2 Recommendations

a. The preferred models listed in Appendix A all accept as input the NWS meteorological data preprocessed into model compatible form. If NWS data are judged to be adequately representative for a particular modeling application, they may be used. NCDC makes available surface<sup>89,90</sup> and upper air<sup>91</sup> meteorological data in CD-ROM format.

b. Although most NWS measurements are made at a standard height of 10 meters, the actual anemometer height should be used as input to the preferred model. Note that AERMOD at a minimum requires wind observations at a height above ground between seven times the local surface roughness height and 100 meters.

c. Wind directions observed by the National Weather Service are reported to the nearest 10 degrees. A specific set of randomly generated numbers has been developed for use with the preferred EPA models and should be used with NWS data to ensure a lack of bias in wind direction assignments within the models.

d. Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail to the NWS data, and they are judged to be adequately representative for the particular application.

#### 8.3.3 Site Specific Data

##### 8.3.3.1 Discussion

a. Spatial or geographical representativeness is best achieved by collection of all of the needed model input

data in close proximity to the actual site of the source(s). Site specific measured data are therefore preferred as model input, provided that appropriate instrumentation and quality assurance procedures are followed and that the data collected are adequately representative (free from inappropriate local or microscale influences) and compatible with the input requirements of the model to be used. It should be noted that, while site specific measurements are frequently made "on-property" (*i.e.*, on the source's premises), acquisition of adequately representative site specific data does not preclude collection of data from a location off property. Conversely, collection of meteorological data on a source's property does not of itself guarantee adequate representativeness. For help in determining representativeness of site specific measurements, technical guidance<sup>92</sup> is available. Site specific data should always be reviewed for representativeness and consistency by a qualified meteorologist.

##### 8.3.3.2 Recommendations

a. EPA guidance<sup>92</sup> provides recommendations on the collection and use of site specific meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to other limited guidance on these subjects.<sup>83,93,94</sup> Detailed information on quality assurance is also available.<sup>95</sup> As a minimum, site specific measurements of ambient air temperature, transport wind speed and direction, and the variables necessary to estimate atmospheric dispersion should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide representative characterization of pollutant transport between sources and receptors of interest. The appropriate reviewing authority (paragraph 3.0(b)) is available to help determine the appropriateness of the measurement locations.

b. All site specific data should be reduced to hourly averages. Table 8-3 lists the wind related parameters and the averaging time requirements.

c. *Missing Data Substitution.* After valid data retrieval requirements have been met<sup>92</sup>, hours in the record having missing data should be treated according to an established data substitution protocol provided that data from an adequately representative alternative site are available. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in Section 5.3 of reference 92. If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

d. *Solar Radiation Measurements.* Total solar radiation or net radiation should be measured with a reliable pyranometer or net radiometer, sited and operated in accordance

with established site specific meteorological guidance.<sup>92,95</sup>

*e. Temperature Measurements.*

Temperature measurements should be made at standard shelter height (2m) in accordance with established site specific meteorological guidance.<sup>92</sup>

*f. Temperature Difference Measurements.*

Temperature difference ( $\Delta T$ ) measurements should be obtained using matched thermometers or a reliable thermocouple system to achieve adequate accuracy. Siting, probe placement, and operation of  $\Delta T$  systems should be based on guidance found in Chapter 3 of reference 92, and such guidance should be followed when obtaining vertical temperature gradient data. AERMET employs the Bulk Richardson scheme which requires measurements of temperature difference. To ensure correct application and acceptance, AERMOD users should consult with the appropriate Reviewing Authority before using the Bulk Richardson scheme for their analysis.

*g. Winds Aloft.* For simulation of plume rise and dispersion of a plume emitted from a stack, characterization of the wind profile up through the layer in which the plume disperses is required. This is especially important in complex terrain and/or complex wind situations where wind measurements at heights up to hundreds of meters above stack base may be required in some circumstances. For tall stacks when site specific data are needed, these winds have been obtained traditionally using meteorological sensors mounted on tall towers. A feasible alternative to tall towers is the use of meteorological remote sensing instruments (e.g., acoustic sounders or radar wind profilers) to provide winds aloft, coupled with 10-meter towers to provide the near-surface winds. (For specific requirements for AERMOD and CTDMPPLUS, see Appendix A.) Specifications for wind measuring instruments and systems are contained in reference 92.

*h. Turbulence.* There are several dispersion models that are capable of using direct measurements of turbulence (wind fluctuations) in the characterization of the vertical and lateral dispersion (e.g., CTDMPPLUS, AERMOD, and CALPUFF). For specific requirements for CTDMPPLUS, AERMOD, and CALPUFF, see Appendix A. For technical guidance on measurement and processing of turbulence parameters, see reference 92. When turbulence data are used in this manner to directly characterize the vertical and lateral dispersion, the averaging time for the turbulence measurements should be one hour (Table 8–3). There are other dispersion models (e.g., BLP, and CALINE3) that employ P–G stability categories for the characterization of the vertical and lateral dispersion. Methods for using site specific turbulence data for the characterization of P–G stability categories are discussed in reference 92. When turbulence data are used in this manner to determine the P–G stability category, the averaging time for the turbulence measurements should be 15 minutes.

*i. Stability Categories.* For dispersion models that employ P–G stability categories for the characterization of the vertical and lateral dispersion, the P–G stability

categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.<sup>70</sup> It is recommended that the P–G stability category be estimated using the Turner method with site specific wind speed measured at or near 10m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site specific cloud observations are unavailable, may be found in Section 6 of reference 92. In the absence of requisite data to implement the Turner method, the SRDT method or wind fluctuation statistics (i.e., the  $\sigma_E$  and  $\sigma_A$  methods) may be used.

*j. The SRDT method,* described in Section 6.4.4.2 of reference 92, is modified slightly from that published from earlier work<sup>96</sup> and has been evaluated with three site specific data bases.<sup>97</sup> The two methods of stability classification which use wind fluctuation statistics, the  $\sigma_E$  and  $\sigma_A$  methods, are also described in detail in Section 6.4.4 of reference 92 (note applicable tables in Section 6). For additional information on the wind fluctuation methods, several references are available.<sup>98,99,100,101</sup>

*k. Meteorological Data Preprocessors.* The following meteorological preprocessors are recommended by EPA: AERMET,<sup>102</sup> PCRAMMET,<sup>103</sup> MPRM,<sup>104</sup> METPRO,<sup>105</sup> and CALMET.<sup>106</sup> AERMET, which is patterned after MPRM, should be used to preprocess all data for use with AERMOD. Except for applications that employ AERMOD, PCRAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring PCRAMMET formatted (NWS) data. MPRM is available for use in applications employing site specific meteorological data. The latest version (MPRM 1.3) has been configured to implement the SRDT method for estimating P–G stability categories. METPRO is the required meteorological data preprocessor for use with CTDMPPLUS. CALMET is available for use with applications of CALPUFF. All of the above mentioned data preprocessors are available for downloading from EPA's Internet SCRAM Web site (subsection 2.3).

TABLE 8–3.—AVERAGING TIMES FOR SITE SPECIFIC WIND AND TURBULENCE MEASUREMENTS

Parameter	Averaging time (hour)
Surface wind speed (for use in stability determinations) .....	1
Transport direction .....	1
Dilution wind speed .....	1

TABLE 8–3.—AVERAGING TIMES FOR SITE SPECIFIC WIND AND TURBULENCE MEASUREMENTS—Continued

Parameter	Averaging time (hour)
Turbulence measurements ( $\sigma_E$ and $\sigma_A$ ) for use in stability determinations .....	1 <sup>1</sup>
Turbulence measurements for direct input to dispersion models .....	1

<sup>1</sup> To minimize meander effects in  $\sigma_A$  when wind conditions are light and/or variable, determine the hourly average  $\sigma$  value from four sequential 15-minute  $\sigma$ 's according to the following formula:

$$\sigma_{1-hr} = \sqrt{\frac{\sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2}{4}}$$

8.3.4 Treatment of Near-Calms and Calms

8.3.4.1 Discussion

a. Treatment of calm or light and variable wind poses a special problem in model applications since steady-state Gaussian plume models assume that concentration is inversely proportional to wind speed. Furthermore, concentrations may become unrealistically large when wind speeds less than 1 m/s are input to the model. Procedures have been developed to prevent the occurrence of overly conservative concentration estimates during periods of calms. These procedures acknowledge that a steady-state Gaussian plume model does not apply during calm conditions, and that our knowledge of wind patterns and plume behavior during these conditions does not, at present, permit the development of a better technique. Therefore, the procedures disregard hours which are identified as calm. The hour is treated as missing and a convention for handling missing hours is recommended.

b. AERMOD, while fundamentally a steady-state Gaussian plume model, contains algorithms for dealing with low wind speed (near calm) conditions. As a result, AERMOD can produce model estimates for conditions when the wind speed may be less than 1 m/s, but still greater than the instrument threshold. Required input to AERMET, the meteorological processor for AERMOD, includes a threshold wind speed and a reference wind speed. The threshold wind speed is typically the threshold of the instrument used to collect the wind speed data. The reference wind speed is selected by the model as the lowest level of non-missing wind speed and direction data where the speed is greater than the wind speed threshold, and the height of the measurement is between seven times the local surface roughness and 100 meters. If the only valid observation of the reference wind speed between these heights is less than the threshold, the hour is considered calm, and no concentration is calculated. None of the observed wind speeds in a measured wind profile that are less than the threshold speed

are used in construction of the modeled wind speed profile in AERMOD.

#### 8.3.4.2 Recommendations

a. Hourly concentrations calculated with steady-state Gaussian plume models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Critical concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentrations for the period by the number of valid or non-missing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. AERMOD has been coded to implement these instructions. For models listed in Appendix A, a post-processor computer program, CALMPRO<sup>107</sup> has been prepared, is available on the SCRAM Internet Web site (subsection 2.3), and should be used.

b. Stagnant conditions that include extended periods of calms often produce high concentrations over wide areas for relatively long averaging periods. The standard steady-state Gaussian plume models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis (see also subsection 7.2.8).

c. When used in steady-state Gaussian plume models, measured site specific wind speeds of less than 1 m/s but higher than the response threshold of the instrument should be input as 1 m/s; the corresponding wind direction should also be input. Wind observations below the response threshold of the instrument should be set to zero, with the input file in ASCII format. For input to AERMOD, no adjustment should be made to the site specific wind data. In all cases involving steady-state Gaussian plume models, calm hours should be treated as missing, and concentrations should be calculated as in paragraph (a) of this subsection.

## 9.0 Accuracy and Uncertainty of Models

### 9.1 Discussion

a. Increasing reliance has been placed on concentration estimates from models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed source, no practical alternative exists. Therefore, there is an obvious need to know how accurate models really are and how any uncertainty in the estimates affects regulatory decisions. During the 1980's, attempts were made to encourage development of standardized evaluation methods.<sup>11 108</sup> EPA recognized the need for incorporating such information and has sponsored workshops<sup>109</sup> on model accuracy, the possible ways to quantify accuracy, and on considerations in the incorporation of model accuracy and

uncertainty in the regulatory process. The Second (EPA) Conference on Air Quality Modeling, August 1982<sup>110</sup>, was devoted to that subject.

b. To better deduce the statistical significance of differences seen in model performance in the face of unaccounted for uncertainties and variations, investigators have more recently explored the use of bootstrap techniques.<sup>111 112</sup> Work is underway to develop a new generation of evaluation metrics<sup>16</sup> that takes into account the statistical differences (in error distributions) between model predictions and observations.<sup>113</sup> Even though the procedures and measures are still evolving to describe performance of models that characterize atmospheric fate, transport and diffusion<sup>114 115 116</sup>, there has been general acceptance of a need to address the uncertainties inherent in atmospheric processes.

#### 9.1.1 Overview of Model Uncertainty

a. Dispersion models generally attempt to estimate concentrations at specific sites that really represent an ensemble average of numerous repetitions of the same event.<sup>16</sup> The event is characterized by measured or "known" conditions that are input to the models, e.g., wind speed, mixed layer height, surface heat flux, emission characteristics, etc. However, in addition to the known conditions, there are unmeasured or unknown variations in the conditions of this event, e.g., unresolved details of the atmospheric flow such as the turbulent velocity field. These unknown conditions, may vary among repetitions of the event. As a result, deviations in observed concentrations from their ensemble average, and from the concentrations estimated by the model, are likely to occur even though the known conditions are fixed. Even with a *perfect model* that predicts the correct ensemble average, there are likely to be deviations from the observed concentrations in individual repetitions of the event, due to variations in the unknown conditions. The statistics of these concentration residuals are termed "inherent" uncertainty. Available evidence suggests that this source of uncertainty alone may be responsible for a typical range of variation in concentrations of as much as  $\pm 50$  percent.<sup>117</sup>

b. Moreover, there is "reducible" uncertainty<sup>108</sup> associated with the model and its input conditions; neither models nor data bases are perfect. Reducible uncertainties are caused by: (1) Uncertainties in the input values of the known conditions (i.e., emission characteristics and meteorological data); (2) errors in the measured concentrations which are used to compute the concentration residuals; and (3) inadequate model physics and formulation. The "reducible" uncertainties can be minimized through better (more accurate and more representative) measurements and better model physics.

c. To use the terminology correctly, reference to model accuracy should be limited to that portion of reducible uncertainty which deals with the physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the

comparison of model concentration estimates with measured air quality data.<sup>118</sup> The statement of accuracy is based on statistical tests or performance measures such as bias, noise, correlation, etc.<sup>11</sup> However, information that allows a distinction between contributions of the various elements of inherent and reducible uncertainty is only now beginning to emerge.<sup>16</sup> As a result most discussions of the accuracy of models make no quantitative distinction between (1) limitations of the model versus (2) limitations of the data base and of knowledge concerning atmospheric variability. The reader should be aware that statements on model accuracy and uncertainty may imply the need for improvements in model performance that even the "perfect" model could not satisfy.

#### 9.1.2 Studies of Model Accuracy

a. A number of studies<sup>119 120</sup> have been conducted to examine model accuracy, particularly with respect to the reliability of short-term concentrations required for ambient standard and increment evaluations. The results of these studies are not surprising. Basically, they confirm what expert atmospheric scientists have said for some time: (1) Models are more reliable for estimating longer time-averaged concentrations than for estimating short-term concentrations at specific locations; and (2) the models are reasonably reliable in estimating the magnitude of highest concentrations occurring sometime, somewhere within an area. For example, errors in highest estimated concentrations of  $\pm 10$  to 40 percent are found to be typical<sup>121 122</sup>, i.e., certainly well within the often quoted factor-of-two accuracy that has long been recognized for these models. However, estimates of concentrations that occur at a specific time and site, are poorly correlated with actually observed concentrations and are much less reliable.

b. As noted above, poor correlations between paired concentrations at fixed stations may be due to "reducible" uncertainties in knowledge of the precise plume location and to unquantified inherent uncertainties. For example, Pasquill<sup>123</sup> estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Uncertainty of five to 10 degrees in the measured wind direction, which transports the plume, can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt.

#### 9.1.3 Use of Uncertainty in Decision-Making

a. The accuracy of model estimates varies with the model used, the type of application, and site specific characteristics. Thus, it is desirable to quantify the accuracy or uncertainty associated with concentration estimates used in decision-making. Communications between modelers and decision-makers must be fostered and further



developed. Communications concerning concentration estimates currently exist in most cases, but the communications dealing with the accuracy of models and its meaning to the decision-maker are limited by the lack of a technical basis for quantifying and directly including uncertainty in decisions. Procedures for quantifying and interpreting uncertainty in the practical application of such concepts are only beginning to evolve; much study is still required.<sup>108 109 110 124 125</sup>

b. In all applications of models an effort is encouraged to identify the reliability of the model estimates for that particular area and to determine the magnitude and sources of error associated with the use of the model. The analyst is responsible for recognizing and quantifying limitations in the accuracy, precision and sensitivity of the procedure. Information that might be useful to the decision-maker in recognizing the seriousness of potential air quality violations includes such model accuracy estimates as accuracy of peak predictions, bias, noise, correlation, frequency distribution, spatial extent of high concentration, etc. Both space/time pairing of estimates and measurements and unpaired comparisons are recommended. Emphasis should be on the highest concentrations and the averaging times of the standards or increments of concern. Where possible, confidence intervals about the statistical values should be provided. However, while such information can be provided by the modeler to the decision-maker, it is unclear how this information should be used to make an air pollution control decision. Given a range of possible outcomes, it is easiest and tends to ensure consistency if the decision-maker confines his judgement to use of the "best estimate" provided by the modeler (*i.e.*, the design concentration estimated by a model recommended in the *Guideline* or an alternate model of known accuracy). This is an indication of the practical limitations imposed by current abilities of the technical community.

c. To improve the basis for decision-making, EPA has developed and is continuing to study procedures for determining the accuracy of models, quantifying the uncertainty, and expressing confidence levels in decisions that are made concerning emissions controls.<sup>126 127</sup> However, work in this area involves "breaking new ground" with slow and sporadic progress likely. As a result, it may be necessary to continue using the "best estimate" until sufficient technical progress has been made to meaningfully implement such concepts dealing with uncertainty.

#### 9.1.4 Evaluation of Models

a. A number of actions have been taken to ensure that the best model is used correctly for each regulatory application and that a model is not arbitrarily imposed. First, the *Guideline* clearly recommends the most appropriate model be used in each case. Preferred models, based on a number of factors, are identified for many uses. General guidance on using alternatives to the preferred models is also provided. Second, the models have been subjected to a systematic performance evaluation and a peer scientific review. Statistical

performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined as recommended by the AMS Woods Hole Workshop<sup>11</sup>, were generally followed. Third, more specific information has been provided for justifying the site specific use of alternative models in previously cited EPA guidance<sup>15</sup>, and new models are under consideration and review.<sup>16</sup> Together these documents provide methods that allow a judgement to be made as to what models are most appropriate for a specific application. For the present, performance and the theoretical evaluation of models are being used as an indirect means to quantify one element of uncertainty in air pollution regulatory decisions.

b. EPA has participated in a series of conferences entitled, "Harmonisation within Atmospheric Dispersion Modelling for Regulatory Purposes."<sup>128</sup> for the purpose of promoting the development of improved methods for the characterization of model performance. There is a consensus developing on what should be considered in the evaluation of air quality models<sup>129</sup>, namely quality assurance planning, documentation and scrutiny should be consistent with the intended use, and should include:

- Scientific peer review;
- Supportive analyses (diagnostic evaluations, code verification, sensitivity and uncertainty analyses);
- Diagnostic and performance evaluations with data obtained in trial locations, and
- Statistical performance evaluations in the circumstances of the intended applications.

Performance evaluations and diagnostic evaluations assess different qualities of how well a model is performing, and both are needed to establish credibility within the client and scientific community. Performance evaluations allow us to decide how well the model simulates the average temporal and spatial patterns seen in the observations, and employ large spatial/temporal scale data sets (*e.g.*, national data sets). Performance evaluations also allow determination of relative performance of a model in comparison with alternative modeling systems. Diagnostic evaluations allow determination of a model capability to simulate individual processes that affect the results, and usually employ smaller spatial/temporal scale data sets (*e.g.*, field studies). Diagnostic evaluations allow us to decide if we get the right answer for the right reason. The objective comparison of modeled concentrations with observed field data provides only a partial means for assessing model performance. Due to the limited supply of evaluation data sets, there are severe practical limits in assessing model performance. For this reason, the conclusions reached in the science peer reviews and the supportive analyses have particular relevance in deciding whether a model will be useful for its intended purposes.

c. To extend information from diagnostic and performance evaluations, sensitivity and uncertainty analyses are encouraged since

they can provide additional information on the effect of inaccuracies in the data bases and on the uncertainty in model estimates. Sensitivity analyses can aid in determining the effect of inaccuracies of variations or uncertainties in the data bases on the range of likely concentrations. Uncertainty analyses can aid in determining the range of likely concentration values, resulting from uncertainties in the model inputs, the model formulations, and parameterizations. Such information may be used to determine source impact and to evaluate control strategies. Where possible, information from such sensitivity analyses should be made available to the decision-maker with an appropriate interpretation of the effect on the critical concentrations.

#### 9.2 Recommendations

a. No specific guidance on the quantification of model uncertainty for use in decision-making is being given at this time. As procedures for considering uncertainty develop and become implementable, this guidance will be changed and expanded. For the present, continued use of the "best estimate" is acceptable; however, in specific circumstances for O<sub>3</sub>, PM-2.5 and regional haze, additional information and/or procedures may be appropriate.<sup>32 33</sup>

### 10.0 Regulatory Application of Models

#### 10.1 Discussion

a. Procedures with respect to the review and analysis of air quality modeling and data analyses in support of SIP revisions, PSD permitting or other regulatory requirements need a certain amount of standardization to ensure consistency in the depth and comprehensiveness of both the review and the analysis itself. This section recommends procedures that permit some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application.

b. Dispersion model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. Nevertheless, there are instances where the performance of recommended dispersion modeling techniques, by comparison with observed air quality data, may be shown to be less than acceptable. Also, there may be no recommended modeling procedure suitable for the situation. In these instances, emission limitations may be established solely on the basis of observed air quality data as would be applied to a modeling analysis. The same care should be given to the analyses of the air quality data as would be applied to a modeling analysis.

c. The current NAAQS for SO<sub>2</sub> and CO are both stated in terms of a concentration not to be exceeded more than once a year. There is only an annual standard for NO<sub>2</sub> and a quarterly standard for Pb. Standards for fine particulate matter (PM-2.5) are expressed in terms of both long-term (annual) and short-term (daily) averages. The long-term standard is calculated using the three year average of the annual averages while the short-term standard is calculated using the three year average of the 98th percentile of the daily

average concentration. For PM-10, the convention is to compare the arithmetic mean, averaged over 3 consecutive years, with the concentration specified in the NAAQS (50  $\mu\text{g}/\text{m}^3$ ). The 24-hour NAAQS (150  $\mu\text{g}/\text{m}^3$ ) is met if, over a 3-year period, there is (on average) no more than one exceedance per year. As noted in subsection 7.2.1.1, the modeled compliance for this NAAQS is based on the highest 6th highest concentration over 5 years. For ozone the short term 1-hour standard is expressed in terms of an expected exceedance limit while the short term 8-hour standard is expressed in terms of a three year average of the annual fourth highest daily maximum 8-hour value. The NAAQS are subjected to extensive review and possible revision every 5 years.

d. This section discusses general requirements for concentration estimates and identifies the relationship to emission limits. The following recommendations apply to: (1) Revisions of State Implementation Plans and (2) the review of new sources and the prevention of significant deterioration (PSD).

## 10.2 Recommendations

### 10.2.1 Analysis Requirements

a. Every effort should be made by the Regional Office to meet with all parties involved in either a SIP revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data. An example of requirements for such an effort is contained in the Air Quality Analysis Checklist posted on EPA's Internet SCRAM Web site (subsection 2.3). This checklist suggests the level of detail required to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at this preapplication meeting. The protocol should be written and agreed upon by the parties concerned, although a formal legal document is not intended. Changes in such a protocol are often required as the data collection and analysis progresses. However, the protocol establishes a common understanding of the requirements.

b. An air quality analysis should begin with a screening model to determine the potential of the proposed source or control strategy to violate the PSD increment or NAAQS. For traditional stationary sources, EPA guidance<sup>24</sup> should be followed. Guidance is also available for mobile sources.<sup>48</sup>

c. If the concentration estimates from screening techniques indicate a significant impact or that the PSD increment or NAAQS may be approached or exceeded, then a more refined modeling analysis is appropriate and the model user should select a model according to recommendations in Sections 4–8. In some instances, no refined technique may be specified in this guide for the situation. The model user is then encouraged to submit a model developed specifically for the case at hand. If that is not possible, a screening technique may supply the needed results.

d. Regional Offices should require permit applicants to incorporate the pollutant contributions of all sources into their analysis. Where necessary this may include emissions associated with growth in the area of impact of the new or modified source. PSD air quality assessments should consider the amount of the allowable air quality increment that has already been consumed by other sources. Therefore, the most recent source applicant should model the existing or permitted sources in addition to the one currently under consideration. This would permit the use of newly acquired data or improved modeling techniques if such have become available since the last source was permitted. When remodeling, the worst case used in the previous modeling analysis should be one set of conditions modeled in the new analysis. All sources should be modeled for each set of meteorological conditions selected.

### 10.2.2 Use of Measured Data in Lieu of Model Estimates

a. Modeling is the preferred method for determining emission limitations for both new and existing sources. When a preferred model is available, model results alone (including background) are sufficient. Monitoring will normally not be accepted as the sole basis for emission limitation. In some instances when the modeling technique available is only a screening technique, the addition of air quality data to the analysis may lend credence to model results.

b. There are circumstances where there is no applicable model, and measured data may need to be used. However, only in the case of a NAAQS assessment for an existing source should monitoring data alone be a basis for emission limits. In addition, the following items (i–vi) should be considered prior to the acceptance of the measured data:

- i. Does a monitoring network exist for the pollutants and averaging times of concern?
- ii. Has the monitoring network been designed to locate points of maximum concentration?
- iii. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements?
- iv. Do the data set and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved?
- v. Is at least one full year of valid ambient data available?
- vi. Can it be demonstrated through the comparison of monitored data with model results that available models are not applicable?

c. The number of monitors required is a function of the problem being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and placement of monitors. Decisions can only be made on a case-by-case basis. Guidance is available for establishing criteria for demonstrating that a model is not applicable?

d. Sources should obtain approval from the appropriate reviewing authority (paragraph 3.0(b)) for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all concerned parties is

highly desirable. The design of the network, the number, type and location of the monitors, the sampling period, averaging time as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.

### 10.2.3 Emission Limits

#### 10.2.3.1 Design Concentrations

a. Emission limits should be based on concentration estimates for the averaging time that results in the most stringent control requirements. The concentration used in specifying emission limits is called the design value or design concentration and is a sum of the concentration contributed by the primary source, other applicable sources, and—for NAAQS assessments—the background concentration.

b. To determine the averaging time for the design value, the most restrictive NAAQS or PSD increment, as applicable, should be identified. For a NAAQS assessment, the averaging time for the design value is determined by calculating, for each averaging time, the ratio of the difference between the applicable NAAQS (S) and the background concentration (B) to the (model) predicted concentration (P) (*i.e.*, (S–B)/P). For a PSD increment assessment, the averaging time for the design value is determined by calculating, for each averaging time, the ratio of the applicable PSD increment (I) and the model-predicted concentration (P) (*i.e.*, I/P). The averaging time with the lowest ratio identifies the most restrictive standard or increment. If the annual average is the most restrictive, the highest estimated annual average concentration from one or a number of years of data is the design value. When short term standards are most restrictive, it may be necessary to consider a broader range of concentrations than the highest value. For example, for pollutants such as SO<sub>2</sub>, the highest, second-highest concentration is the design value. For pollutants with statistically based NAAQS, the design value is found by determining the more restrictive of: (1) The short-term concentration over the period specified in the standard, or (2) the long-term concentration that is not expected to exceed the long-term NAAQS. Determination of design values for PM-10 is presented in more detail in EPA guidance.<sup>34</sup>

#### 10.2.3.2 NAAQS Analyses for New or Modified Sources

a. For new or modified sources predicted to have a significant ambient impact<sup>83</sup> and to be located in areas designated attainment or unclassifiable for the SO<sub>2</sub>, Pb, NO<sub>2</sub>, or CO NAAQS, the demonstration as to whether the source will cause or contribute to an air quality violation should be based on: (1) The highest estimated annual average concentration determined from annual averages of individual years; or (2) the highest, second-highest estimated concentration for averaging times of 24-hours or less; and (3) the significance of the spatial and temporal contribution to any modeled violation. For Pb, the highest estimated concentration based on an individual calendar quarter averaging period should be

used. Background concentrations should be added to the estimated impact of the source. The most restrictive standard should be used in all cases to assess the threat of an air quality violation. For new or modified sources predicted to have a significant ambient impact<sup>83</sup> in areas designated attainment or unclassifiable for the PM-10 NAAQS, the demonstration of whether or not the source will cause or contribute to an air quality violation should be based on sufficient data to show whether: (1) The projected 24-hour average concentrations will exceed the 24-hour NAAQS more than once per year, on average; (2) the expected (i.e., average) annual mean concentration will exceed the annual NAAQS; and (3) the source contributes significantly, in a temporal and spatial sense, to any modeled violation.

#### 10.2.3.3 PSD Air Quality Increments and Impacts

a. The allowable PSD increments for criteria pollutants are established by regulation and cited in 40 CFR 51.166. These maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, except for the annual increment that may not be exceeded. The highest, second-highest increase in estimated concentrations for the short term averages as determined by a model should be less than or equal to the permitted increment. The modeled annual averages should not exceed the increment.

b. Screening techniques defined in subsection 4.2.1 can sometimes be used to estimate short term incremental concentrations for the first new source that triggers the baseline in a given area. However, when multiple increment-consuming sources are involved in the calculation, the use of a refined model with at least 1 year of site specific or 5 years of (off-site) NWS data is normally required (subsection 8.3.1.2). In such cases, sequential modeling must demonstrate that the allowable increments are not exceeded temporally and spatially, i.e., for all receptors for each time period throughout the year(s) (time period means the appropriate PSD averaging time, e.g., 3-hour, 24-hour, etc.).

c. The PSD regulations require an estimation of the SO<sub>2</sub>, particulate matter (PM-10), and NO<sub>2</sub> impact on any Class I area. Normally, steady-state Gaussian plume models should not be applied at distances greater than can be accommodated by the steady state assumptions inherent in such models. The maximum distance for refined steady-state Gaussian plume model application for regulatory purposes is generally considered to be 50km. Beyond the 50km range, screening techniques may be used to determine if more refined modeling is needed. If refined models are needed, long range transport models should be considered in accordance with subsection 6.2.3. As previously noted in Sections 3 and 7, the need to involve the Federal Land Manager in decisions on potential air quality impacts, particularly in relation to PSD Class I areas, cannot be overemphasized.

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## APPENDIX A TO APPENDIX W OF PART 51—SUMMARIES OF PREFERRED AIR QUALITY MODELS

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- A.0 Introduction and Availability
- A.1 Aermod

- A.2 Buoyant Line and Point Source Dispersion Model (BLP)

- A.3 CALINE3

- A.4 CALPUFF

- A.5 Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS)

- A.6 Offshore and Coastal Dispersion Model (OCD)

- A.REF References

### A.0 Introduction and Availability

(1) This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost (where applicable), regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

(2) Many of these models have been subjected to a performance evaluation using comparisons with observed air quality data. Where possible, several of the models contained herein have been subjected to evaluation exercises, including (1) statistical performance tests recommended by the American Meteorological Society and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

(3) Codes and documentation for all models listed in this appendix are available from EPA's Support Center for Regulatory Air Models (SCRAM) Web site at <http://www.epa.gov/scram001>. Documentation is also available from the National Technical Information Service (NTIS), <http://www.ntis.gov> or U.S. Department of Commerce, Springfield, VA 22161; phone: (800) 553–6847. Where possible, accession numbers are provided.

### A.1 AMS/EPA Regulatory Model—AERMOD

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Schulman, L.L., D.G. Strimaitis and J.S. Scire, 2000. Development and evaluation of the PRIME plume rise and building downwash model. *Journal of the Air and Waste Management Association*, 50: 378–390.

#### Availability

The model codes and associated documentation are available on EPA's Internet SCRAM Web site (Section A.0).

#### Abstract

AERMOD is a steady-state plume dispersion model for assessment of pollutant concentrations from a variety of sources. AERMOD simulates transport and dispersion from multiple point, area, or volume sources based on an up-to-date characterization of the atmospheric boundary layer. Sources may be located in rural or urban areas, and receptors may be located in simple or complex terrain. AERMOD accounts for building wake effects (i.e., plume downwash) based on the PRIME building downwash algorithms. The model employs hourly sequential preprocessed meteorological data to estimate concentrations for averaging times from one hour to one year (also multiple years). AERMOD is designed to operate in concert with two pre-processor codes: AERMET processes meteorological data for input to AERMOD, and AERMAP processes terrain elevation data and generates receptor information for input to AERMOD.

#### a. Recommendations for Regulatory Use

(1) AERMOD is appropriate for the following applications:

- Point, volume, and area sources;
- Surface, near-surface, and elevated releases;

- Rural or urban areas;
- Simple and complex terrain;
- Transport distances over which steady-state assumptions are appropriate, up to 50km;

- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

(2) For regulatory applications of AERMOD, the regulatory default option should be set, i.e., the parameter DFAULT should be employed in the MODELOPT record in the CControl Pathway. The DFAULT option requires the use of terrain elevation data, stack-tip downwash, sequential date checking, and does not permit the use of the model in the SCREEN mode. In the regulatory default mode, pollutant half life or

decay options are not employed, except in the case of an urban source of sulfur dioxide where a four-hour half life is applied. Terrain elevation data from the U.S. Geological Survey 7.5-Minute Digital Elevation Model ([edcwww.cr.usgs.gov/doc/edchome/ndcldb/ndcldb.html](http://edcwww.cr.usgs.gov/doc/edchome/ndcldb/ndcldb.html)) or equivalent (approx. 30-meter resolution) should be used in all applications. In some cases, exceptions of the terrain data requirement may be made in consultation with the permit/SIP reviewing authority.

#### b. Input Requirements

(1) Source data: Required input includes source type, location, emission rate, stack height, stack inside diameter, stack gas exit velocity, stack gas temperature, area and volume source dimensions, and source elevation. Building dimensions and variable emission rates are optional.

(2) Meteorological data: The AERMET meteorological preprocessor requires input of surface characteristics, including surface roughness ( $z_o$ ), Bowen ratio, and albedo, as well as, hourly observations of wind speed between 7z0 and 100m (reference wind speed measurement from which a vertical profile can be developed), wind direction, cloud cover, and temperature between  $z_o$  and 100m (reference temperature measurement from which a vertical profile can be developed). Surface characteristics may be varied by wind sector and by season or month. A morning sounding (in National Weather Service format) from a representative upper air station, latitude, longitude, time zone, and wind speed threshold are also required in AERMET (instrument threshold is only required for site specific data). Additionally, measured profiles of wind, temperature, vertical and lateral turbulence may be required in certain applications (e.g., in complex terrain) to adequately represent the meteorology affecting plume transport and dispersion. Optionally, measurements of solar, or net radiation may be input to AERMET. Two files are produced by the AERMET meteorological preprocessor for input to the AERMOD dispersion model. The surface file contains observed and calculated surface variables, one record per hour. The profile file contains the observations made at each level of a meteorological tower (or remote sensor), or the one-level observations taken from other representative data (e.g., National Weather Service surface observations), one record per level per hour.

(i) Data used as input to AERMET should possess an adequate degree of representativeness to insure that the wind, temperature and turbulence profiles derived by AERMOD are both laterally and vertically representative of the source area. The adequacy of input data should be judged independently for each variable. The values for surface roughness, Bowen ratio, and albedo should reflect the surface characteristics in the vicinity of the meteorological tower, and should be adequately representative of the modeling domain. Finally, the primary atmospheric input variables including wind speed and direction, ambient temperature, cloud cover, and a morning upper air sounding should also be adequately representative of the source area.

(ii) For recommendations regarding the length of meteorological record needed to perform a regulatory analysis with AERMOD, see Section 8.3.1.

(3) Receptor data: Receptor coordinates, elevations, height above ground, and hill height scales are produced by the AERMAP terrain preprocessor for input to AERMOD. Discrete receptors and/or multiple receptor grids, Cartesian and/or polar, may be employed in AERMOD. AERMAP requires input of Digital Elevation Model (DEM) terrain data produced by the U.S. Geological Survey (USGS), or other equivalent data. AERMAP can be used optionally to estimate source elevations.

#### c. Output

Printed output options include input information, high concentration summary tables by receptor for user-specified averaging periods, maximum concentration summary tables, and concurrent values summarized by receptor for each day processed. Optional output files can be generated for: a listing of occurrences of exceedances of user-specified threshold value; a listing of concurrent (raw) results at each receptor for each hour modeled, suitable for post-processing; a listing of design values that can be imported into graphics software for plotting contours; an unformatted listing of raw results above a threshold value with a special structure for use with the TOXX model component of TOXST; a listing of concentrations by rank (e.g., for use in quantile-quantile plots); and, a listing of concentrations, including arc-maximum normalized concentrations, suitable for model evaluation studies.

#### d. Type of Model

AERMOD is a steady-state plume model, using Gaussian distributions in the vertical and horizontal for stable conditions, and in the horizontal for convective conditions. The vertical concentration distribution for convective conditions results from an assumed bi-Gaussian probability density function of the vertical velocity.

#### e. Pollutant Types

AERMOD is applicable to primary pollutants and continuous releases of toxic and hazardous waste pollutants. Chemical transformation is treated by simple exponential decay.

#### f. Source-Receptor Relationships

AERMOD applies user-specified locations for sources and receptors. Actual separation between each source-receptor pair is used. Source and receptor elevations are user input or are determined by AERMAP using USGS DEM terrain data. Receptors may be located at user-specified heights above ground level.

#### g. Plume Behavior

(1) In the convective boundary layer (CBL), the transport and dispersion of a plume is characterized as the superposition of three modeled plumes: The direct plume (from the stack), the indirect plume, and the penetrated plume, where the indirect plume accounts for the lofting of a buoyant plume near the top of the boundary layer, and the penetrated plume accounts for the portion of a plume that, due to its buoyancy, penetrates above

the mixed layer, but can disperse downward and re-enter the mixed layer. In the CBL, plume rise is superposed on the displacements by random convective velocities (Weil *et al.*, 1997).

(2) In the stable boundary layer, plume rise is estimated using an iterative approach, similar to that in the CTDMPLUS model (see A.5 in this appendix).

(3) Stack-tip downwash and buoyancy induced dispersion effects are modeled. Building wake effects are simulated for stacks less than good engineering practice height using the methods contained in the PRIME downwash algorithms (Schulman, *et al.*, 2000). For plume rise affected by the presence of a building, the PRIME downwash algorithm uses a numerical solution of the mass, energy and momentum conservation laws (Zhang and Ghoniem, 1993). Streamline deflection and the position of the stack relative to the building affect plume trajectory and dispersion. Enhanced dispersion is based on the approach of Weil (1996). Plume mass captured by the cavity is well-mixed within the cavity. The captured plume mass is re-emitted to the far wake as a volume source.

(4) For elevated terrain, AERMOD incorporates the concept of the critical dividing streamline height, in which flow below this height remains horizontal, and flow above this height tends to rise up and over terrain (Snyder *et al.*, 1985). Plume concentration estimates are the weighted sum of these two limiting plume states. However, consistent with the steady-state assumption of uniform horizontal wind direction over the modeling domain, straight-line plume trajectories are assumed, with adjustment in the plume/receptor geometry used to account for the terrain effects.

#### h. Horizontal Winds

Vertical profiles of wind are calculated for each hour based on measurements and surface-layer similarity (scaling) relationships. At a given height above ground, for a given hour, winds are assumed constant over the modeling domain. The effect of the vertical variation in horizontal wind speed on dispersion is accounted for through simple averaging over the plume depth.

#### i. Vertical Wind Speed

In convective conditions, the effects of random vertical updraft and downdraft velocities are simulated with a bi-Gaussian probability density function. In both convective and stable conditions, the mean vertical wind speed is assumed equal to zero.

#### j. Horizontal Dispersion

Gaussian horizontal dispersion coefficients are estimated as continuous functions of the parameterized (or measured) ambient lateral turbulence and also account for buoyancy-induced and building wake-induced turbulence. Vertical profiles of lateral turbulence are developed from measurements and similarity (scaling) relationships. Effective turbulence values are determined from the portion of the vertical profile of lateral turbulence between the plume height and the receptor height. The effective lateral turbulence is then used to estimate horizontal dispersion.



#### k. Vertical Dispersion

In the stable boundary layer, Gaussian vertical dispersion coefficients are estimated as continuous functions of parameterized vertical turbulence. In the convective boundary layer, vertical dispersion is characterized by a bi-Gaussian probability density function, and is also estimated as a continuous function of parameterized vertical turbulence. Vertical turbulence profiles are developed from measurements and similarity (scaling) relationships. These turbulence profiles account for both convective and mechanical turbulence. Effective turbulence values are determined from the portion of the vertical profile of vertical turbulence between the plume height and the receptor height. The effective vertical turbulence is then used to estimate vertical dispersion.

#### l. Chemical Transformation

Chemical transformations are generally not treated by AERMOD. However, AERMOD does contain an option to treat chemical transformation using simple exponential decay, although this option is typically not used in regulatory applications, except for sources of sulfur dioxide in urban areas. Either a decay coefficient or a half life is input by the user. Note also that the Plume Volume Molar Ratio Method (subsection 5.1) and the Ozone Limiting Method (subsection 5.2.4) and for point-source NO<sub>2</sub> analyses are available as non-regulatory options.

#### m. Physical Removal

AERMOD can be used to treat dry and wet deposition for both gases and particles.

#### n. Evaluation Studies

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Brode, R.W., 2002. Implementation and Evaluation of PRIME in AERMOD. Preprints of the 12th Joint Conference on Applications of Air Pollution Meteorology, May 20-24, 2002; American Meteorological Society, Boston, MA.

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Environmental Protection Agency, 2003. AERMOD: Latest Features and Evaluation Results. Publication No. EPA-454/R-03-003. U.S. Environmental Protection Agency, Research Triangle Park, NC. Available at <http://www.epa.gov/scram001/>.

#### A.2 Buoyant Line and Point Source Dispersion Model (BLP)

##### Reference

Schulman, Lloyd L., and Joseph S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide. Document P-7304B. Environmental Research and Technology, Inc., Concord, MA. (NTIS No. PB 81-164642; also available at <http://www.epa.gov/scram001/>)

#### Availability

The computer code is available on EPA's Internet SCRAM Web site and also on diskette (as PB 2002-500051) from the National Technical Information Service (see Section A.0).

#### Abstract

BLP is a Gaussian plume dispersion model designed to handle unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary line sources are important.

#### a. Recommendations for Regulatory Use

(1) The BLP model is appropriate for the following applications:

- Aluminum reduction plants which contain buoyant, elevated line sources;
- Rural areas;
- Transport distances less than 50 kilometers;
- Simple terrain; and
- One hour to one year averaging times.

(2) The following options should be selected for regulatory applications:

- (i) Rural (IRU=1) mixing height option;
- (ii) Default (no selection) for plume rise wind shear (LSHEAR), transitional point source plume rise (LTRANS), vertical potential temperature gradient (DTHTA), vertical wind speed power law profile exponents (PEXP), maximum variation in number of stability classes per hour (IDELS), pollutant decay (DECFA), the constant in Briggs' stable plume rise equation (CONST2), constant in Briggs' neutral plume rise equation (CONST3), convergence criterion for the line source calculations (CRIT), and maximum iterations allowed for line source calculations (MAXIT); and
- (iii) Terrain option (TERAN) set equal to 0.0, 0.0, 0.0, 0.0, 0.0, 0.0

(3) For other applications, BLP can be used if it can be demonstrated to give the same estimates as a recommended model for the same application, and will subsequently be executed in that mode.

(4) BLP can be used on a case-by-case basis with specific options not available in a recommended model if it can be demonstrated, using the criteria in Section 3.2, that the model is more appropriate for a specific application.

#### b. Input Requirements

(1) Source data: point sources require stack location, elevation of stack base, physical stack height, stack inside diameter, stack gas exit velocity, stack gas exit temperature, and pollutant emission rate. Line sources require coordinates of the end points of the line, release height, emission rate, average line source width, average building width, average spacing between buildings, and average line source buoyancy parameter.

(2) Meteorological data: surface weather data from a preprocessor such as PCRAMMET which provides hourly stability class, wind direction, wind speed, temperature, and mixing height.

(3) Receptor data: locations and elevations of receptors, or location and size of receptor grid or request automatically generated receptor grid.

#### c. Output

(1) Printed output (from a separate post-processor program) includes:

(2) Total concentration or, optionally, source contribution analysis; monthly and annual frequency distributions for 1-, 3-, and 24-hour average concentrations; tables of 1-, 3-, and 24-hour average concentrations at each receptor; table of the annual (or length of run) average concentrations at each receptor;

(3) Five highest 1-, 3-, and 24-hour average concentrations at each receptor; and

(4) Fifty highest 1-, 3-, and 24-hour concentrations over the receptor field.

#### d. Type of Model

BLP is a gaussian plume model.

#### e. Pollutant Types

BLP may be used to model primary pollutants. This model does not treat settling and deposition.

#### f. Source-Receptor Relationship

(1) BLP treats up to 50 point sources, 10 parallel line sources, and 100 receptors arbitrarily located.

(2) User-input topographic elevation is applied for each stack and each receptor.

#### g. Plume Behavior

(1) BLP uses plume rise formulas of Schulman and Scire (1980).

(2) Vertical potential temperature gradients of 0.02 Kelvin per meter for E stability and 0.035 Kelvin per meter are used for stable plume rise calculations. An option for user input values is included.

(3) Transitional rise is used for line sources.

(4) Option to suppress the use of transitional plume rise for point sources is included.

(5) The building downwash algorithm of Schulman and Scire (1980) is used.

#### h. Horizontal Winds

(1) Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

(2) Wind speeds profile exponents of 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 are used for stability classes A through F, respectively. An option for user-defined values and an option to suppress the use of the wind speed profile feature are included.

#### i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

#### j. Horizontal Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness or averaging time.

(2) Six stability classes are used.

#### k. Vertical Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness.

(2) Six stability classes are used.

(3) Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the

mixing height; uniform mixing is assumed beyond that point.

(4) Perfect reflection at the ground is assumed.

#### l. Chemical Transformation

Chemical transformations are treated using linear decay. Decay rate is input by the user.

#### m. Physical Removal

Physical removal is not explicitly treated.

#### n. Evaluation Studies

Schulman, L.L. and J.S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide, P-7304B. Environmental Research and Technology, Inc., Concord, MA.

Scire, J.S. and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF<sub>6</sub> Tracer Data and SO<sub>2</sub> Measurements at Aluminum Reduction Plants. APCA Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

### A.3 CALINE3

#### Reference

Benson, Paul E., 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL-79/23. Federal Highway Administration, Washington, DC (NTIS No. PB 80-220841).

#### Availability

The CALINE3 model is available on diskette (as PB 95-502712) from NTIS. The source code and user's guide are also available on EPA's Internet SCRAM Web site (Section A.0).

#### Abstract

CALINE3 can be used to estimate the concentrations of nonreactive pollutants from highway traffic. This steady-state Gaussian model can be applied to determine air pollution concentrations at receptor locations downwind of "at-grade," "fill," "bridge," and "cut section" highways located in relatively uncomplicated terrain. The model is applicable for any wind direction, highway orientation, and receptor location. The model has adjustments for averaging time and surface roughness, and can handle up to 20 links and 20 receptors. It also contains an algorithm for deposition and settling velocity so that particulate concentrations can be predicted.

#### a. Recommendations for Regulatory Use

CALINE-3 is appropriate for the following applications:

- Highway (line) sources;
- Urban or rural areas;
- Simple terrain;
- Transport distances less than 50 kilometers; and
- One-hour to 24-hour averaging times.

#### b. Input Requirements

(1) Source data: up to 20 highway links classed as "at-grade," "fill," "bridge," or "depressed"; coordinates of link end points; traffic volume; emission factor; source height; and mixing zone width.

(2) Meteorological data: wind speed, wind angle (measured in degrees clockwise from the Y axis), stability class, mixing height, ambient (background to the highway) concentration of pollutant.

(3) Receptor data: coordinates and height above ground for each receptor.

#### c. Output

Printed output includes concentration at each receptor for the specified meteorological condition.

#### d. Type of Model

CALINE-3 is a Gaussian plume model.

#### e. Pollutant Types

CALINE-3 may be used to model primary pollutants.

#### f. Source-Receptor Relationship

(1) Up to 20 highway links are treated.

(2) CALINE-3 applies user input location and emission rate for each link. User-input receptor locations are applied.

#### g. Plume Behavior

Plume rise is not treated.

#### h. Horizontal Winds

(1) User-input hourly wind speed and direction are applied.

(2) Constant, uniform (steady-state) wind is assumed for an hour.

#### i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

#### j. Horizontal Dispersion

(1) Six stability classes are used.

(2) Rural dispersion coefficients from Turner (1969) are used, with adjustment for roughness length and averaging time.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

#### k. Vertical Dispersion

(1) Six stability classes are used.

(2) Empirical dispersion coefficients from Benson (1979) are used including an adjustment for roughness length.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

(4) Adjustment for averaging time is included.

#### l. Chemical Transformation

Not treated.

#### m. Physical Removal

Optional deposition calculations are included.

#### n. Evaluation Studies

Bemis, G.R. *et al.*, 1977. Air Pollution and Roadway Location, Design, and Operation—Project Overview. FHWA-CA-TL-7080-77-25, Federal Highway Administration, Washington, DC.

Cadle, S.H. *et al.*, 1976. Results of the General Motors Sulfate Dispersion Experiment, GMR-2107. General Motors Research Laboratories, Warren, MI.

Dabberdt, W.F., 1975. Studies of Air Quality on and Near Highways, Project 2761. Stanford Research Institute, Menlo Park, CA.

Environmental Protection Agency, 1986. Evaluation of Mobile Source Air Quality Simulation Models. EPA Publication No.

EPA-450/4-86-002. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 86-167293)

### A.4 CALPUFF

#### References

Scire, J.S., D.G. Strimaitis and R.J. Yamartino, 2000. A User's Guide for the CALPUFF Dispersion Model (Version 5.0). Earth Tech, Inc., Concord, MA.

Scire J.S., F.R. Robe, M.E. Fernau and R.J. Yamartino, 2000. A User's Guide for the CALMET Meteorological Model (Version 5.0). Earth Tech, Inc., Concord, MA.

#### Availability

The model code and its documentation are available at no cost for download from the model developers' Internet Web site: <http://www.src.com/calpuff/calpuff1.htm>. You may also contact Joseph Scire, Earth Tech, Inc., 196 Baker Avenue, Concord, MA 01742; Telephone: (978) 371-4270; Fax: (978) 371-2468; e-mail: [JScire@alum.mit.edu](mailto:JScire@alum.mit.edu).

#### Abstract

CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion modeling system that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF is intended for use on scales from tens of meters from a source to hundreds of kilometers. It includes algorithms for near-field effects such as stack tip downwash, building downwash, transitional buoyant and momentum plume rise, rain cap effects, partial plume penetration, subgrid scale terrain and coastal interactions effects, and terrain impingement as well as longer range effects such as pollutant removal due to wet scavenging and dry deposition, chemical transformation, vertical wind shear effects, overwater transport, plume fumigation, and visibility effects of particulate matter concentrations.

#### a. Recommendations for Regulatory Use

(1) CALPUFF is appropriate for long range transport (source-receptor distances of 50 to several hundred kilometers) of emissions from point, volume, area, and line sources. The meteorological input data should be fully characterized with time-and-space-varying three dimensional wind and meteorological conditions using CALMET, as discussed in paragraphs 8.3(d) and 8.3.1.2(d) of Appendix W.

(2) CALPUFF may also be used on a case-by-case basis if it can be demonstrated using the criteria in Section 3.2 that the model is more appropriate for the specific application. The purpose of choosing a modeling system like CALPUFF is to fully treat stagnation, wind reversals, and time and space variations of meteorological conditions on transport and dispersion, as discussed in paragraph 7.2.8(a).

(3) For regulatory applications of CALMET and CALPUFF, the regulatory default option should be used. Inevitably, some of the model control options will have to be set specific for the application using expert judgment and in consultation with the appropriate reviewing authorities.

## b. Input Requirements

## Source Data:

1. Point sources: Source location, stack height, diameter, exit velocity, exit temperature, base elevation, wind direction specific building dimensions (for building downwash calculations), and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying point source parameters may be entered from an external file.

2. Area sources: Source location and shape, release height, base elevation, initial vertical distribution ( $\sigma_z$ ) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying area source parameters may be entered from an external file. Area sources specified in the external file are allowed to be buoyant and their location, size, shape, and other source characteristics are allowed to change in time.

3. Volume sources: Source location, release height, base elevation, initial horizontal and vertical distributions ( $\sigma_y$ ,  $\sigma_z$ ) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying volume source parameters may be entered from an external file. Volume sources with buoyancy can be simulated by treating the source as a point source and entering initial plume size parameters—initial ( $\sigma_y$ ,  $\sigma_z$ )—to define the initial size of the volume source.

4. Line sources: Source location, release height, base elevation, average buoyancy parameter, and emission rates for each pollutant. Building data may be entered for line source emissions experiencing building downwash effects. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying line source parameters may be entered from an external file.

Meteorological Data (different forms of meteorological input can be used by CALPUFF):

1. Time-dependent three-dimensional (3-D) meteorological fields generated by CALMET. This is the preferred mode for running CALPUFF. Data inputs used by CALMET include surface observations of wind speed, wind direction, temperature, cloud cover, ceiling height, relative humidity, surface pressure, and precipitation (type and amount), and upper air sounding data (wind speed, wind direction, temperature, and height) and air-sea temperature differences (over water). Optional 3-D meteorological prognostic model output (e.g., from models such as

MM5, RUC, Eta and RAMS) can be used by CALMET as well (paragraph 8.3.1.2(d)). CALMET contains an option to be run in “No-observations” mode (Robe et al., 2002), which allows the 3-D CALMET meteorological fields to be based on prognostic model output alone, without observations. This allows CALMET and CALPUFF to be run in prognostic mode for forecast applications.

2. Single station surface and upper air meteorological data in CTDMPLUS data file formats (SURFACE.DAT and PROFILE.DAT files) or AERMOD data file formats. These options allow a vertical variation in the meteorological parameters but no horizontal spatial variability.

3. Single station meteorological data in ISCST3 data file format. This option does not account for variability of the meteorological parameters in the horizontal or vertical, except as provided for by the use of stability-dependent wind shear exponents and average temperature lapse rates.

Gridded terrain and land use data are required as input into CALMET when Option 1 is used. Geophysical processor programs are provided that interface the modeling system to standard terrain and land use data bases available from various sources such as the U.S. Geological Survey (USGS) and the National Aeronautics and Space Administration (NASA).

## Receptor Data:

CALPUFF includes options for gridded and non-gridded (discrete) receptors. Special subgrid-scale receptors are used with the subgrid-scale complex terrain option. An option is provided for discrete receptors to be placed at ground-level or above the local ground level (i.e., flagpole receptors). Gridded and subgrid-scale receptors are placed at the local ground level only.

## Other Input:

CALPUFF accepts hourly observations of ozone concentrations for use in its chemical transformation algorithm. Monthly concentrations of ammonia concentrations can be specified in the CALPUFF input file, although higher time-resolution ammonia variability can be computed using the POSTUTIL program. Subgrid-scale coastlines can be specified in its coastal boundary file. Optional, user-specified deposition velocities and chemical transformation rates can also be entered. CALPUFF accepts the CTDMPLUS terrain and receptor files for use in its subgrid-scale terrain algorithm. Inflow boundary conditions of modeled pollutants can be specified in a boundary condition file. Liquid water content variables including cloud water/ice and precipitation water/ice can be used as input for visibility analyses and other CALPUFF modules.

## c. Output

CALPUFF produces files of hourly concentrations of ambient concentrations for each modeled species, wet deposition fluxes, dry deposition fluxes, and for visibility applications, extinction coefficients. Postprocessing programs (PRTMET, CALPOST, CALSUM, APPEND, and POSTUTIL) provide options for summing, scaling, analyzing and displaying the modeling results. CALPOST contains options for computing of light extinction (visibility)

and POSTUTIL allows the re-partitioning of nitric acid and nitrate to account for the effects of ammonia limitation (Scire et al., 2001; Escoffier-Czaja and Scire, 2002). CALPUFF contains an options to output liquid water concentrations for use in computing visible plume lengths and frequency of icing and fogging from cooling towers and other water vapor sources. The CALPRO Graphical User Interface (GUI) contains options for creating graphics such as contour plots, vector plots and other displays when linked to graphics software.

## d. Type of Model

(1) CALPUFF is a non-steady-state time- and space-dependent Gaussian puff model. CALPUFF treats primary pollutants and simulates secondary pollutant formation using a parameterized, quasi-linear chemical conversion mechanism. Pollutants treated include  $\text{SO}_2$ ,  $\text{SO}_4^{2-}$ ,  $\text{NO}_x$  (i.e.,  $\text{NO} + \text{NO}_2$ ),  $\text{HNO}_3$ ,  $\text{NO}_3^-$ ,  $\text{NH}_3$ , PM-10, PM-2.5, toxic pollutants and others pollutant species that are either inert or subject to quasi-linear chemical reactions. The model includes a resistance-based dry deposition model for both gaseous pollutants and particulate matter. Wet deposition is treated using a scavenging coefficient approach. The model has detailed parameterizations of complex terrain effects, including terrain impingement, side-wall scrapping, and steep-walled terrain influences on lateral plume growth. A subgrid-scale complex terrain module based on a dividing streamline concept divides the flow into a lift component traveling over the obstacle and a wrap component deflected around the obstacle.

(2) The meteorological fields used by CALPUFF are produced by the CALMET meteorological model. CALMET includes a diagnostic wind field model containing parameterized treatments of slope flows, valley flows, terrain blocking effects, and kinematic terrain effects, lake and sea breeze circulations, a divergence minimization procedure, and objective analysis of observational data. An energy-balance scheme is used to compute sensible and latent heat fluxes and turbulence parameters over land surfaces. A profile method is used over water. CALMET contains interfaces to prognostic meteorological models such as the Penn State/NCAR Mesoscale Model (e.g., MM5; Section 12.0, ref. 86), as well as the RAMS, Ruc and Eta models.

## e. Pollutant Types

CALPUFF may be used to model gaseous pollutants or particulate matter that are inert or which undergo quasi-linear chemical reactions, such as  $\text{SO}_2$ ,  $\text{SO}_4^{2-}$ ,  $\text{NO}_x$  (i.e.,  $\text{NO} + \text{NO}_2$ ),  $\text{HNO}_3$ ,  $\text{NO}_3^-$ ,  $\text{NH}_3$ , PM-10, PM-2.5 and toxic pollutants. For regional haze analyses, sulfate and nitrate particulate components are explicitly treated.

## f. Source-Receptor Relationships

CALPUFF contains no fundamental limitations on the number of sources or receptors. Parameter files are provided that allow the user to specify the maximum number of sources, receptors, puffs, species, grid cells, vertical layers, and other model parameters. Its algorithms are designed to be

suitable for source-receptor distances from tens of meters to hundreds of kilometers.

#### g. Plume Behavior

Momentum and buoyant plume rise is treated according to the plume rise equations of Briggs (1975) for non-downwashing point sources, Schulman and Scire (1980) for line sources and point sources subject to building downwash effects using the Schulman-Scire downwash algorithm, and Zhang (1993) for buoyant area sources and point sources affected by building downwash when using the PRIME building downwash method. Stack tip downwash effects and partial plume penetration into elevated temperature inversions are included. An algorithm to treat horizontally-oriented vents and stacks with rain caps is included.

#### h. Horizontal Winds

A three-dimensional wind field is computed by the CALMET meteorological model. CALMET combines an objective analysis procedure using wind observations with parameterized treatments of slope flows, valley flows, terrain kinematic effects, terrain blocking effects, and sea/lake breeze circulations. CALPUFF may optionally use single station (horizontally-constant) wind fields in the CTDMPPLUS, AERMOD or ISCST3 data formats.

#### i. Vertical Wind Speed

Vertical wind speeds are not used explicitly by CALPUFF. Vertical winds are used in the development of the horizontal wind components by CALMET.

#### j. Horizontal Dispersion

Turbulence-based dispersion coefficients provide estimates of horizontal plume dispersion based on measured or computed values of  $\sigma_v$ . The effects of building downwash and buoyancy-induced dispersion are included. The effects of vertical wind shear are included through the puff splitting algorithm. Options are provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

#### k. Vertical Dispersion

Turbulence-based dispersion coefficients provide estimates of vertical plume dispersion based on measured or computed values of  $\sigma_w$ . The effects of building downwash and buoyancy-induced dispersion are included. Vertical dispersion during convective conditions is simulated with a probability density function (pdf) model based on Weil *et al.* (1997). Options are provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

#### l. Chemical Transformation

Gas phase chemical transformations are treated using parameterized models of SO<sub>2</sub> conversion to SO<sub>4</sub>= and NO conversion to NO<sub>3</sub>-, HNO<sub>3</sub>, and NO<sub>2</sub>. Organic aerosol formation is treated. The POSTUTIL program contains an option to re-partition HNO<sub>3</sub> and NO<sub>3</sub>- in order to treat the effects of ammonia limitation.

#### m. Physical Removal

Dry deposition of gaseous pollutants and particulate matter is parameterized in terms of a resistance-based deposition model. Gravitational settling, inertial impaction, and Brownian motion effects on deposition of particulate matter is included. CALPUFF contains an option to evaluate the effects of plume tilt resulting from gravitational settling. Wet deposition of gases and particulate matter is parameterized in terms of a scavenging coefficient approach.

#### n. Evaluation Studies

Berman, S., J.Y. Ku, J. Zhang and S.T. Rao, 1977. Uncertainties in estimating the mixing depth—Comparing three mixing depth models with profiler measurements. *Atmospheric Environment*, 31: 3023–3039.

Chang, J.C., P. Franzese, K. Chayantrakom and S.R. Hanna, 2001. Evaluations of CALPUFF, HPAC and VLSTRACK with Two Mesoscale Field Datasets. *Journal of Applied Meteorology*, 42(4): 453–466.

Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA Publication No. EPA-454/R-98-019. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

Irwin, J.S., 1997. A Comparison of CALPUFF Modeling Results with 1997 INEL Field Data Results. In *Air Pollution Modeling and its Application, XII*. Edited by S.E. Gyrning and N. Chaumerliac. Plenum Press, New York, NY.

Irwin, J.S., J.S. Scire and D.G. Strimaitis, 1996. A Comparison of CALPUFF Modeling Results with CAPTEX Field Data Results. In *Air Pollution Modeling and its Application, XI*. Edited by S.E. Gyrning and F.A. Schiermeier. Plenum Press, New York, NY.

Morrison, K. Z-X Wu, J.S. Scire, J. Chenier and T. Jeffs-Schonewille, 2003. CALPUFF-Based Predictive and Reactive Emission Control System. 96th A&WMA Annual Conference & Exhibition, 22–26 June 2003; San Diego, CA.

Schulman, L.L., D.G. Strimaitis and J.S. Scire, 2000. Development and evaluation of the PRIME Plume Rise and Building Downwash Model. *JAWMA*, 50: 378–390.

Scire, J.S., Z-X Wu, D.G. Strimaitis and G.E. Moore, 2001. The Southwest Wyoming Regional CALPUFF Air Quality Modeling Study—Volume I. Prepared for the Wyoming Dept. of Environmental Quality. Available from Earth Tech at <http://www.src.com>.

Strimaitis, D.G., J.S. Scire and J.C. Chang, 1998. Evaluation of the CALPUFF Dispersion Model with Two Power Plant Data Sets. Tenth Joint Conference on the Application of Air Pollution Meteorology, Phoenix, Arizona. American Meteorological Society, Boston, MA. January 11–16, 1998.

### A.5 Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS)

#### Reference

Perry, S.G., D.J. Burns, L.H. Adams, R.J. Paine, M.G. Dennis, M.T. Mills, D.G. Strimaitis, R.J. Yamartino and E.M. Insley, 1989. User's Guide to the Complex Terrain

Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA-600/8-89-041. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89-181424) Perry, S.G., 1992. CTDMPPLUS: A Dispersion Model for Sources near Complex Topography. Part I: Technical Formulations. *Journal of Applied Meteorology*, 31(7): 633–645.

#### Availability

This model code is available on EPA's Internet SCRAM Web site and also on diskette (as PB 90-504119) from the National Technical Information Service (Section A.0).

#### Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. The model contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPPLUS. CTDMPPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

#### a. Recommendation for Regulatory Use

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- One hour to annual averaging times when used with a post-processor program such as CHAVG.

#### b. Input Requirements

(1) Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

(2) Meteorological data: For applications of CTDMPPLUS, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required to create the basic meteorological data file ("PROFILE"). Such measurements should be obtained up to the representative plume height(s) of interest (*i.e.*, the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.*, CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately

sited meteorological tower augmented by SODAR and/or RASS if the representative plume height(s) of interest is above the levels represented by the tower measurements. Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

(3) Receptor data: receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

(4) Terrain data: user inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

#### c. Output

(1) When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, *i.e.*,

- Input meteorological data from "SURFACE" and "PROFILE".
- Stack data for each source.
- Terrain information.
- Receptor information.
- Source-receptor location (line printer map).

(2) In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height.
- Geometrical relationships between the source and the hill.
- Plume characteristics at each receptor, *i.e.*,

- Distance in along-flow and cross flow direction
- Effective plume-receptor height difference
- Effective  $\sigma_y$  &  $\sigma_z$  values, both flat terrain and hill induced (the difference shows the effect of the hill)
- Concentration components due to WRAP, LIFT and FLAT.

(3) If the user selects the TOPN option, a summary table of the top 4 concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

(4) A separate disk file of predicted (1-hour only) concentrations ("CONC") is written if the user chooses this option. Three forms of output are possible:

- (i) A binary file of concentrations, one value for each receptor in the hourly sequence as run;
- (ii) A text file of concentrations, one value for each receptor in the hourly sequence as run; or
- (iii) A text file as described above, but with a listing of receptor information (names, positions, hill number) at the beginning of the file.

(3) Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

#### d. Type of Model

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

#### e. Pollutant Types

CTDMPLUS may be used to model non-reactive, primary pollutants.

#### f. Source-Receptor Relationship

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Boussinesq flow are applicable. Receptors upwind of the impingement point, or those associated with any of the hills in the modeling domain, require separate treatment.

#### g. Plume Behavior

(1) As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

(2) A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height ( $H_c$ ) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

(3) The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of  $H_c$ , and the Froude number above  $H_c$ .

#### h. Horizontal Winds

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

#### i. Vertical Wind Speed

Vertical flow is treated for the plume component above the critical dividing streamline height ( $H_c$ ); see "Plume Behavior".

#### j. Horizontal Dispersion

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations,  $\sigma_v$ , for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

#### k. Vertical Dispersion

Direct estimates of vertical dispersion for stable/neutral conditions are based on

observed vertical turbulence intensity, *e.g.*,  $\sigma_w$  (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (pdf) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

#### l. Chemical Transformation

Chemical transformation is not treated by CTDMPLUS.

#### m. Physical Removal

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

#### n. Evaluation Studies

Burns, D.J., L.H. Adams and S.G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part II: Performance Characteristics. *Journal of Applied Meteorology*, 31(7): 646-660.

#### A.6 Offshore and Coastal Dispersion Model (OCD)

##### Reference

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. (NTIS Nos. PB 93-144384 and PB 93-144392; also available at <http://www.epa.gov/scram001/>)

##### Availability

This model code is available on EPA's Internet SCRAM Web site and also on diskette (as PB 91-505230) from the National Technical Information Service (see Section A.0). Official contact at Minerals Management Service: Mr. Dirk Herkhof, Parkway Atrium Building, 381 Elden Street, Herndon, VA 20170, Phone: (703) 787-1735.

##### Abstract

(1) OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

(2) Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

## a. Recommendations for Regulatory Use

OCD has been recommended for use by the Minerals Management Service for emissions located on the Outer Continental Shelf (50 FR 12248; 28 March 1985). OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

## b. Input Requirements

(1) Source data: Point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity, stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

(2) Meteorological data (over water): Wind direction, wind speed, mixing height, relative humidity, air temperature, water surface temperature, vertical wind direction shear (optional), vertical temperature gradient (optional), turbulence intensities (optional).

## (2) Meteorological data:

Over land: Surface weather data from a preprocessor such as PCRAMMET which provides hourly stability class, wind direction, wind speed, ambient temperature, and mixing height are required.

Over water: Hourly values for mixing height, relative humidity, air temperature, and water surface temperature are required; if wind speed/direction are missing, values over land will be used (if available); vertical wind direction shear, vertical temperature gradient, and turbulence intensities are optional.

(3) Receptor data: Location, height above local ground-level, ground-level elevation above the water surface.

## c. Output

(1) All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

(2) Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

(3) Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

(4) Concentration files written to disk or tape can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

## d. Type of Model

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

## e. Pollutant Types

OCD may be used to model primary pollutants. Settling and deposition are not treated.

## f. Source-Receptor Relationship

(1) Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

(2) Receptors and sources are allowed at any location.

(3) The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

## g. Plume Behavior

(1) As in ISC, the basic plume rise algorithms are based on Briggs' recommendations.

(2) Momentum rise includes consideration of the stack angle from the vertical.

(3) The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

(4) Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

(5) Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

## h. Horizontal Winds

(1) Constant, uniform wind is assumed for each hour.

(2) Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

(3) Wind speed profiles are estimated using similarity theory (Businger, 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

## i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

## j. Horizontal Dispersion

(1) Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 8 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

(2) Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

## k. Vertical Dispersion

(1) Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer

theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

(2) Vertical dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

## 1. Chemical Transformation

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

## m. Physical Removal

Physical removal is also treated using exponential decay.

## n. Evaluation Studies

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# Federal Register

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**Wednesday,  
November 9, 2005**

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## **Part IV**

## **Department of Agriculture**

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### **Forest Service**

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**36 CFR Parts 212, 251, 261, and 295  
Travel Management; Designated Routes  
and Areas for Motor Vehicle Use; Final  
Rule**



**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Parts 212, 251, 261, and 295**

RIN 0596-AC11

**Travel Management; Designated Routes and Areas for Motor Vehicle Use****AGENCY:** Forest Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is revising regulations regarding travel management on National Forest System lands to clarify policy related to motor vehicle use, including the use of off-highway vehicles. This final rule requires designation of those roads, trails, and areas that are open to motor vehicle use. Designations will be made by class of vehicle and, if appropriate, by time of year. The final rule will prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations. The clear identification of roads, trails, and areas for motor vehicle use on each National Forest will enhance management of National Forest System lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on National Forest System lands; address needs for access to National Forest System lands; and preserve areas of opportunity on each National Forest for nonmotorized travel and experiences. The final rule is consistent with provisions of Executive Order 11644 and Executive Order 11989 regarding off-road use of motor vehicles on Federal lands.

**EFFECTIVE DATE:** This rule is effective December 9, 2005.

**ADDRESSES:** The rulemaking record for this final rule contains all the documents pertinent to this rulemaking. These documents are available for inspection and copying at the office of the Director, Recreation and Heritage Resources Staff, USDA, Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect or copy these documents are encouraged to call Jerry Ingersoll, Recreation and Heritage Resources staff, at (202) 205-0931 beforehand to facilitate access to the building.

**FOR FURTHER INFORMATION CONTACT:** Jerry Ingersoll, Recreation and Heritage Resources Staff, (202) 205-0931.

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**1. Background***Travel Management Program*

Forest Service regulations at 36 CFR part 212 governing administration of the forest transportation system and regulations at 36 CFR part 295 governing use of motor vehicles off National Forest System (NFS) roads are combined and clarified in this final rule as part 212, Travel Management, covering the use of motor vehicles on NFS lands. These regulations implement Executive Order (E.O.) 11644 (February 8, 1972), "Use of Off-Road Vehicles on the Public Lands," as amended by E.O. 11989 (May 24, 1977). These Executive orders direct Federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Nationally, the Forest Service manages approximately 300,000 miles of NFS roads open to motor vehicle use, and about 133,000 miles of NFS trails.

Only a portion of the trails are open to motor vehicles. This transportation system ranges from paved roads designed for passenger cars to single-track trails used by dirt bikes. Many roads designed for high-clearance vehicles (such as log trucks and sport utility vehicles) also allow use by all-terrain vehicles (ATVs) and other off-highway vehicles (OHVs) not normally found on city streets. Almost all NFS trails serve nonmotorized users, including hikers, bicyclists, and equestrians, alone or in combination with motorized users. NFS roads often accept nonmotorized use as well.

In addition to this managed system of roads and trails, many National Forests contain user-created roads and trails. These routes are concentrated in areas where cross-country travel by motor vehicles has been allowed, and sometimes include dense, braided networks of criss-crossing trail. There has been no comprehensive national inventory of user-created routes (and continuing proliferation of such routes has made a definitive inventory difficult), but they are estimated to number in the tens of thousands of miles.

Wilderness areas are closed to motor vehicles by statute. On some National Forests, and portions of others, motor vehicles are restricted by order to the established system of roads and trails. On other Forests, cross-country travel is not currently restricted.

*Need for Revised Rule*

Most National Forest visitors use motor vehicles to access the National Forests, whether for recreational sightseeing; camping and hiking; hunting and fishing; commercial purposes such as logging, mining, and grazing; administration of utilities and other land uses; outfitting and guiding; or the many other multiple uses of NFS lands. For many visitors, motor vehicles also represent an integral part of their recreational experience. People come to National Forests to ride on roads and trails in pickup trucks, ATVs, motorcycles, and a variety of other conveyances. Motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests—in the right places, and with proper management.

Current regulations at 36 CFR part 295, which provide for allowing, restricting, or prohibiting motor vehicle travel, were developed when OHVs were less widely available, less powerful, and less capable of cross-country travel than today's models. The growing popularity and capabilities of OHVs demand new regulations, so that

the Forest Service can continue to provide these opportunities while sustaining the health of NFS lands and resources.

From 1982 to 2000, the number of people driving motor vehicles off road in the United States increased over 109 percent ("Outdoor Recreation for 21st Century America: A Report to the Nation, The National Survey on Recreation and the Environment," p. 37 (H. Cordell, 2004)). Recent decades have seen like advances in the power, range, and capabilities of OHVs. Whole new classes of vehicles have been introduced by manufacturers and are growing in popularity. From 1997 to 2001, the number of ATVs in use increased by almost 40 percent (statement by Dr. Edward J. Heiden at Consumer Products Safety Commission Field Hearing, June 5, 2003). These advances expand opportunities for Americans to enjoy Federal lands. However, the magnitude and intensity of motor vehicle use have increased to the point that the intent of E.O. 11644 and E.O. 11989 cannot be met while still allowing unrestricted cross-country travel. Soil erosion, water quality, and wildlife habitat are affected. Some National Forest visitors report that their ability to enjoy quiet recreational experiences is affected by visitors using motor vehicles. A designated and managed system of roads, trails, and areas for motor vehicle use is needed.

Current regulations prohibit trail construction (§ 261.10(a)) and operation of vehicles in a manner damaging to the land, wildlife, or vegetation (§ 261.13(h)). However, these regulations have not proven sufficient to control proliferation of routes or environmental damage. This insufficiency is due in part to the nature of OHV travel. The first vehicle driving across a particular meadow may not harm the land. However, by the time 50 vehicles have crossed the same path, there may be a user-created trail and lasting environmental impacts. Determining which particular vehicle caused the damage can sometimes represent a challenge to law enforcement officers.

In addition, the line between highway vehicles and OHVs has blurred. Vehicles created for specialized off-road use, such as military vehicles, are now marketed and purchased as family cars. Some States have recently enacted statutes governing OHV use, including vehicle registration requirements, limits on operator age, training and licensing requirements, equipment requirements, sound restrictions, and safety requirements.

Current agency policy varies from State to State and National Forest to

National Forest. Sometimes one National Forest restricts motor vehicles to roads and trails, while an adjoining National Forest allows unrestricted cross-country travel. One State may prohibit ATVs on public roads, while an adjoining State generally allows such use. Revised regulations are needed to provide national consistency and clarity on motor vehicle use within the NFS. At the same time, the Department believes that designations of roads, trails, and areas for motor vehicle use should be made locally. The final rule provides a national framework under which designations are made at the local level.

Americans cherish the National Forests and National Grasslands for the values they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure. The agency must strike an appropriate balance in managing all types of recreational activities. To this end, a designated system of roads, trails, and areas for motor vehicle use, established with public involvement, will enhance public enjoyment of the National Forests while maintaining other important values and uses on NFS lands.

## 2. Public Comments on Proposed Rule and Department Responses

### Overview

On July 15, 2004, the Forest Service published a proposed rule in the **Federal Register** (69 FR 135) seeking public comment in amending regulations at 36 CFR parts 212, 251, 261, and 295 to clarify policy related to motor vehicle use on NFS lands, including the use of OHVs. The proposed regulation would require designation of those roads, trails, and areas that are open to motor vehicle use. Designations would be made by class of vehicle and, if appropriate, by time of year. The proposed rule would prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles that is not consistent with the designations.

During the 60-day comment period that ended on September 13, 2004, the agency received six requests for an extension of the comment period. Five of these were mailed during the last two business days of the comment period, and were received after the comment period closed. Respondents indicated that, due to the complexity of the proposed regulations, additional time was needed. The Forest Service did not

extend the comment period because the agency does not agree that the proposed regulation was complex and because of the strong interest expressed in many other comments to expedite the rulemaking.

The proposed rule was posted electronically on the World Wide Web at the **Federal Register** site at <http://www.gpoaccess.gov> and at the FirstGov e-rulemaking site at <http://www.regulations.gov>. The agency also posted the proposed rule on its World Wide Web site for OHVs at <http://www.fs.fed.us/recreation/programs/ohv>. The Forest Service received 81,563 letters or electronic messages in response to the proposed rule, of which 9,638 contained original text (the remainder were form submissions). More than 80 percent of the comments were submitted electronically. Responses submitting original text represent the following categories:

Academic .....	2
Business Association .....	11
Civic Group .....	1
Consultants/Legal Representatives ...	3
County Agency/Elected Official .....	16
Domestic Livestock Industry/Permit Holders .....	5
Federal Agency/Elected Official .....	2
Individual (unaffiliated or unidentified) .....	9,310
Mechanized Recreation Group (bicycling) .....	2
Mining Industry Association .....	2
Motorized Recreation Group .....	71
Multiple Use/Land Rights Organization .....	1
Nonmechanized Recreation Group ...	24
Oil, Natural Gas, Coal Industry (leasable) .....	2
Other or Unidentified Organization .....	1
Place-Based Group (homeowners association) .....	2
Preservation/Conservation Organization .....	98
Private Landowner .....	2
Recreational/Conservation Organization .....	14
Recreation Organization (non-specific) .....	5
Special Use Permit Holder .....	2
State Agency/Elected Official .....	21
Timber/Wood Products Industry .....	3
Town/City Agency/Elected Official .....	2
Tribal Agency/Elected Official .....	3
Tribal Member/Nongovernmental Organization .....	3
Single Responses Signed by Multiple Organizations .....	29

The respondents represented all 50 States, the District of Columbia, Puerto Rico, seven foreign countries, and two international U.S. Armed Forces bases. The largest number of responses containing original text came from California (1,308), Washington (565), and Oregon (392).

A summary report and searchable database of comments are available by

contacting the Forest Service (see: **ADDRESSES**). The comments also are available for review in hard copy, but arrangements for viewing them should be made in advance as they are warehoused off site.

Many comments came from organizations and individuals concerned about impacts of OHVs on the environment and on nonmotorized uses. These comments included form letters and standard letters with additional specific information added by the commenter.

Many comments also came from organizations and individuals concerned about potential restrictions on OHV use. These comments included form letters and standard letters with additional information added.

Federal, tribal, State, and local agencies and elected officials also submitted comments. The Forest Service received comments from 2 Federal agencies, 21 State governments, 3 Federally recognized tribal governments, and 18 county, municipal, and local governments, representing a variety of points of view.

Many respondents offered general comments either supporting or not supporting the proposed rule, or supporting or opposing OHV use in general. Most also offered specific comments about sections of the proposed rule that they would like to see revised. Many respondents offered suggestions for implementation, funding, and enforcement of the rule at the local level. A few respondents submitted comments on other rulemaking efforts or existing Forest Service policy beyond the scope of this rulemaking.

#### *General Comments*

*Comment.* Many respondents supported multiple uses of NFS lands and recreational access for OHVs. These respondents believed that closures harm the public, private landowners, economic interests, and the environment by limiting and concentrating use. These respondents suggested that the agency support the public interest, rather than letting environmental and anti-access groups drive agency policy. These respondents were concerned that nonmotorized interests have an unfair advantage in public involvement due to better funding, organization, and access to decisionmaking.

Many other respondents supported environmental protection and nonmotorized recreational uses of NFS lands and suggested confining OHVs to small, geographically isolated areas separated from nonmotorized users.

These respondents believed that OHVs harm the environment, as well as people looking for quiet, peaceful recreation experiences. They suggested that the agency support the public interest, rather than letting manufacturers and user groups drive agency policy. These respondents were concerned that motorized interests have an unfair advantage in public involvement due to better funding, organization, and access to decisionmaking.

*Response.* The Department believes that National Forests should provide access for both motorized and nonmotorized users in a manner that is environmentally sustainable over the long term. The NFS is not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre. It is entirely appropriate for different areas of the National Forests to provide different opportunities for recreation. The Department believes such choices and evaluations are best made at the local level, with full involvement of Federal, tribal, State, and local governments, motorized and nonmotorized users, and other interested parties, as provided for in this final rule.

*Comment.* Some respondents stated that OHVs should not be allowed on National Forests at all. These respondents suggested that National Forests should be managed primarily for preservation of natural values, water quality, wildlife habitat, endangered species, biological diversity, quiet, and spiritual renewal.

*Response.* The Department disagrees. National Forests are managed by law for multiple use. They are managed not only for the purposes stated in these comments, but for timber, grazing, mining, and outdoor recreation. These uses must be balanced, rather than one given preference over another.

*Comment.* Some respondents stated that Americans have an unrestricted right to unlimited access to National Forests with motor vehicles and insisted that the Forest Service restore this right.

*Response.* The Department disagrees with this assertion. National Forests belong to all Americans, but Americans do not have a right to unrestricted use of National Forests. Congress established the Forest Service to provide reasonable regulation of the National Forests so that future generations can continue to enjoy them.

*Comment.* Some respondents requested improved Forest Service accountability, communications, and consistency in implementing rules governing motor vehicle use.

*Response.* The final rule is intended to provide a consistent framework and

consistent terminology for travel management decisions made at the local level. For greater clarity in terminology, the final rule adds a definition for "off-highway vehicle" and changes the term "use map" to "motor vehicle use map."

*Comment.* Many respondents asked that decisions on motor vehicle use be based on high-quality scientific information, including review by independent scientists, and not on biased data. Some respondents suggested that motor vehicle use should be allowed only when it can be clearly proven to be harmless to the environment. Others suggested that motor vehicle use should be restricted only when it can be clearly proven to be harmful to the environment.

*Response.* Designations of roads, trails, and areas for motor vehicle use should be based on accurate, pertinent, unbiased information. The Department does not believe that it is necessary to have independent scientists review proposed designation decisions. The Department disagrees that motor vehicle use should be allowed only when it can be clearly proven to be harmless to the environment, and that motor vehicle use should be restricted only when it can be clearly proven to be harmful to the environment. Rather, designation decisions will be made in accordance with the criteria in § 212.55 of the final rule.

*Comment.* Some respondents stated that access to private inholdings must not be restricted by this rule, and that reciprocal rights-of-way between the Forest Service and private landowners should be allowed.

*Response.* The final rule requires responsible officials to recognize rights of access in designating roads, trails, and areas (§ 212.55(d)). Rights of access include valid existing rights and rights of use of NFS roads and NFS trails under § 212.6(b). This final rule does not affect reciprocal rights-of-way between the Forest Service and private landowners.

*Comment.* Some respondents asked the Forest Service to encourage private landowners to open OHV trails and accommodate use on private lands.

*Response.* Many private landowners allow recreational use of their lands, including use by OHVs. Some private landowners provide managed facilities for OHV enthusiasts. In some cases, trails on private land are part of a network including NFS lands. The Forest Service often works with private landowners to secure public rights-of-way for trails providing access to the National Forests. However, the Department believes that private

landowners are the best judges of the proper uses for their land.

*Comment.* Some respondents asked the Forest Service to set aside nonmotorized "quiet use areas" across the NFS.

*Response.* The final rule requires local agency officials, working with the public, to designate which roads, trails, and areas are available for motor vehicle use. The final rule prohibits use off the designated system. In designating roads, trails, and areas, local agency officials must consider minimization of conflicts among uses of NFS lands (§ 212.55(a)). In designating trails and areas, local agency officials must consider compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors (§ 212.55(b)(5)). A system of quiet use areas established outside the designation process is unnecessary.

*Comment.* Some respondents suggested that all routes closed to motor vehicles should also be closed to horses, bicycles, and all nonpedestrian access.

*Response.* The Department disagrees. Some poorly located, unauthorized routes causing considerable environmental damage may have to be closed to all uses. However, other routes are better suited to some uses than others. In some areas of high concentrations of use, maintaining separate trail networks for different uses may reduce conflict and enhance public safety and the recreational experience. In other areas, multiple-use trails work well. The Department believes these decisions are best made at the local level, with public participation.

*Comment.* Some respondents asked the Forest Service to provide access to groups that maintain and improve roads and trails.

*Response.* The Department is grateful to the many groups who provide volunteer assistance in constructing, improving, and maintaining roads and trails. Without the support of these groups, public access and recreational opportunities would be more limited. Most of these groups help maintain trails not to get special privileges, but to provide better access for everyone. The Department supports the general principle of equal public access to Federal lands.

*Comment.* Some respondents suggested limits on timber harvesting and grazing, and on road construction related to timber harvesting. Other respondents requested increased fuel treatment to protect communities from wildfire and construction of additional roads for fuel reduction, fire

suppression, and timber management needs.

*Response.* These comments are beyond the scope of this rule. Road construction for timber harvesting, fuel treatment, or other purposes must be subjected to site-specific environmental analysis, which establishes road management objectives. Roads constructed as part of these projects could be added to the system of designated roads, trails, and areas open to motor vehicles, depending on the results of these local decisions.

*Comment.* Some respondents suggested that the Forest Service retain a right-of-way for public access in all land exchanges, and deny access to private landowners who block public access to Federal lands.

*Response.* This comment is beyond the scope of this final rule. The Forest Service seeks, wherever possible, to secure or retain public access to Federal lands by purchasing or exchanging rights-of-way and reserving rights-of-way in land exchanges.

*Comment.* Some respondents requested additional scientific studies of the environmental impacts of motor vehicle use, the social and economic impacts of restrictions on motor vehicle use, the impacts of road closures on firefighting and fuel reduction, the numbers of visitors using motor vehicles, and other related topics.

*Response.* In addition to the studies mentioned in the preamble to the proposed rule, ongoing studies by Forest Service researchers and monitoring by National Forest managers address several of these topics. The Department believes that these studies support the need for this final rule. As stated in the preamble to the proposed rule, the results of monitoring pursuant to § 212.57 of the final rule could provide the basis for revision or rescission of designations made pursuant to § 212.51, or for a determination of considerable adverse effects for purposes of implementing a temporary, emergency closure pursuant to § 212.52(b)(2).

*Comment.* One respondent asserted that the Forest Service must formally consult with the U.S. Fish and Wildlife Service on the effects of this rule on threatened and endangered species, as required by the Endangered Species Act (ESA).

*Response.* The Department has determined that this final rule will have no effect on threatened or endangered species. The final rule establishes a procedural framework for local decisionmaking and will not have any effect until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District,

with opportunity for public involvement and coordination with Federal, State, local, and tribal governments. Designation decisions at the local level will be accompanied by appropriate consideration of potential impacts to threatened and endangered species. If such decisions may affect threatened or endangered species, the Forest Service will consult with the U.S. Fish and Wildlife Service, as appropriate, under Section 7 of the ESA.

#### *Forest Service Directives*

*Comment.* Some respondents asked the Forest Service to issue proposed directives on implementation of the final travel management rule and requested that the agency seek public comment on these directives. One respondent stated that the final rule must be consistent with Forest Service Manual and Forest Service Handbook direction.

*Response.* The Forest Service provides internal direction to field units through its directives system, consisting of the Forest Service Manual (FSM) and Forest Service Handbooks (FSH). The FSM and FSH assist field units in implementing programs established by statutes and regulations. The Forest Service plans to develop proposed directives implementing this final rule and to publish them in the **Federal Register** for public notice and comment.

*Comment.* Some respondents requested that officials responsible for implementation of this rule be properly identified, qualified, and free of conflict of interest. Others asked the agency to ensure that Forest Service officials do not play an active role in State or local legislation affecting OHVs.

*Response.* Section 212.51 of the final rule provides that designations shall be made by the responsible official on administrative units or Ranger Districts of the NFS. Delegations of authority for designation decisions will be included in directives issued for purposes of implementing this final rule. The Department expects that designation decisions will generally be made by Forest Supervisors and District Rangers. Forest Supervisors and District Rangers are selected for their positions based on Federal civil service rules. Federal ethics and conduct rules protect the public and agency personnel from conflicts of interest and limit the roles agency personnel may play in their official capacities in the State or local legislative process.

*Comment.* Some respondents requested standardized, easily available use maps and interagency signage to ensure consistent communication and enforcement of route designations.

*Response.* The Forest Service plans to develop a standard national format for motor vehicle use maps issued under this final rule. In the final rule, the Department is changing the term "use map" to "motor vehicle use map." Motor vehicle use maps will be available at local Forest Service offices and, as soon as practicable, on Forest Service web sites. The Forest Service plans to issue additional travel management guidance in its sign handbook to ensure consistent messages and use of standard interagency symbols.

*Comment.* Many respondents submitted suggestions on compliance with the National Environmental Policy Act (NEPA) in connection with designation of routes and areas for motor vehicle use. Some suggested including provisions on this topic in the rule itself. Others suggested specific direction related to the range of alternatives subject to consideration, the scope of analysis, the starting point for analysis, and the various environmental effects to be considered.

*Response.* Regulations implementing NEPA are issued by the Council on Environmental Quality and are found at 40 CFR part 1500. Agency direction on NEPA compliance is found in FSH 1909.15. The Department believes that the scope, content, and documentation of NEPA analysis associated with designating routes and areas for motor vehicle use will ultimately depend on site-specific factors, including the local history of travel planning, public input, and environmental impacts at the local level. Therefore, the Department is not addressing NEPA compliance in this final rule.

*Comment.* Many respondents addressed the status of user-created routes in areas currently managed as open to cross-country motor vehicle use, especially with regard to NEPA compliance (FSH 1909.15). Some respondents asked the Forest Service to acknowledge all such routes as legal, legitimate travel ways, and to require specific documentation and analysis to close them. Other respondents asked the Forest Service to treat all such routes as illicit and subject to immediate closure.

*Response.* The Department rejects both of these approaches. User-created routes were developed without agency authorization, environmental analysis, or public involvement and do not have the same status as NFS roads and trails included in the forest transportation system.

Some user-created routes are well-sited, provide excellent opportunities for outdoor recreation by motorized and nonmotorized users alike, involve less

environmental impact than unrestricted cross-country motor vehicle use, and would enhance the system of designated routes and areas. Other user-created routes are poorly located and cause unacceptable environmental impacts.

The Department believes that evaluation of user-created routes is best handled at the local level by officials with first-hand knowledge of the particular circumstances, uses, and environmental impacts involved, working closely with local governments, users, and other members of the public.

*Comment.* Some respondents suggested reviewing and inventorying all roads, trails, and areas, without regard to prior travel management decisions and travel plans. Other respondents observed that land management plans, travel plans, and other recent agency documents already include a variety of decisions related to motor vehicle use and route designation. These respondents asked the agency to recognize existing plans and decisions in designating roads, trails, and areas for motor vehicle use.

*Response.* The Department believes that reviewing and inventorying all roads, trails, and areas without regard to prior travel management decisions and travel plans would be unproductive, inefficient, counter to the purposes of this final rule, and disrespectful of public involvement in past decisionmaking. Local responsible officials can and should take into account past travel management decisions.

Some National Forests have long restricted motor vehicles to designated routes under E.O. 11644, 36 CFR part 295, and FSM 2355. Other National Forests have recently issued comprehensive travel management decisions that restrict motor vehicle use to designated routes and issued orders that prohibit cross-country motor vehicle use. All National Forests have a system of NFS roads open to motor vehicle use, and many also have a system of NFS trails managed for motor vehicle use.

Nothing in this final rule requires reconsideration of any previous administrative decisions that allow, restrict, or prohibit motor vehicle use on NFS roads and NFS trails or in areas on NFS lands and that were made under other authorities, including decisions made in land management plans and travel plans. The final rule adds a new paragraph (b) to §212.50 to clarify that these decisions may be incorporated into designations made pursuant to this final rule.

Some National Forests or Ranger Districts have previous administrative

decisions, made under other authorities with public involvement, which restrict motor vehicle use over an entire Forest or District to designated routes and areas. In these cases, the responsible official may, with public notice but no further analysis or decisionmaking, establish that decision or those decisions as the designation pursuant to this rule for the National Forest or Ranger District, effective upon publication of a motor vehicle use map. In that situation, the only substantive change effected by this final rule would be enforcement of the restrictions pursuant to the prohibition in §261.13, rather than pursuant to an order issued under part 261, subpart B. The final rule includes additional language in §212.52(a) to clarify that no further public involvement is required in this special case.

Alternatively, responsible officials may choose to reconsider past decisions, with public involvement, as necessary to achieve the purposes of the final rule.

The final rule recognizes that designations of roads, trails, and areas for motor vehicle use are not permanent. Unforeseen environmental impacts, changes in public demand, route construction, and monitoring conducted under §212.57 of the final rule may lead responsible officials to consider revising designations under §212.54 of the final rule.

Designations must be consistent with the applicable land management plan. If a responsible official proposes a designation that would be inconsistent with the applicable land management plan, a proposed amendment to the plan must be included with the proposed designation so that the designation decision will conform with the land management plan.

*Comment.* Some respondents observed that NFS roads that are open to motor vehicle use are already in effect designated and need not be re-evaluated. Other respondents asked the agency to ensure that proposed changes to allowed uses, reconstruction, and changes in maintenance levels resulting in changes in type or level of use receive appropriate site-specific consideration.

*Response.* As recognized in the preamble to the proposed rule, to a certain degree, NFS roads are in effect already designated for some classes of motor vehicle use. These roads are included in a forest transportation atlas, and road management objectives may establish the appropriate vehicle classes and uses for each road segment. In recent years, the roads analysis process established under 36 CFR 212.5 and FSM 7712 has been used to evaluate the

long-term management objectives for the passenger car road system in each National Forest.

This final rule does not require responsible officials to reconsider decisions authorizing motor vehicle use on NFS roads and NFS trails. After consulting with the public, responsible officials may choose to reconsider past decisions as necessary to achieve the purposes of this final rule. In addition, responsible officials may revise designations under § 212.54 of the final rule. Revisions of designations, including revisions in the class of vehicle designated for use, must be made in accordance with the requirements for public involvement in § 212.52 and the criteria in § 212.55. Road reconstruction is beyond the scope of the designation provisions in subpart B of this rule.

#### Implementation

*Comment.* Many respondents requested a specific, enforceable deadline (most suggested two years) for completing route and area designation and ending cross-country motor vehicle use. Many other respondents asked the Forest Service not to establish a specific time frame for completing designations, and to allow enough time to complete a full and fair evaluation of all potential routes.

*Response.* The Department shares an interest in completing route and area designation as quickly as possible. The problems associated with unmanaged motor vehicle use are important and deserve immediate attention. The Forest Service will make every effort, within its available resources, to complete route and area designation as quickly as possible. However, the Department disagrees with establishing an enforceable deadline for completion of the process. Imposing an enforceable deadline for completing designations would subject the Forest Service to legal challenge if, despite its best efforts (perhaps due to the controversy involved in the process), the agency is unable to meet the deadline. The Department believes that cooperative work by responsible officials with State, tribal, county, and municipal governments, user groups, and other interested parties offers the best hope for long-term resolution of issues involving recreational use, including use of motor vehicles. An inflexible deadline can make collaborative solutions more difficult.

*Comment.* Some respondents requested that the Forest Service complete a full inventory of all existing motor vehicle routes, regardless of origin, prior to making a designation

decision. Many of these respondents asked the Forest Service to cooperate with user groups in conducting this inventory, but some also insisted that the agency take ultimate responsibility for including all user-created routes.

*Response.* The Department disagrees that a complete inventory of user-created routes is required in order to complete the designation process. As a practical matter, such an inventory may never be fully complete, as new routes will continue to be created during the inventory process. A complete inventory would be very time-consuming and expensive, delaying completion of route designation. Advance planning based on public involvement, careful design, and site-specific environmental analysis provide the best hope for a sustainable, managed system of motor vehicle routes and areas addressing user needs and safety with a minimum of environmental impacts.

As stated above, some user-created routes would make excellent additions to the system of designated routes and areas. The Forest Service is committed to working with user groups and others to identify such routes and consider them on a site-specific basis.

*Comment.* Some respondents asked the Forest Service to include potential future routes in the inventory and designation process, and to make provision for including additional user-created routes discovered after designation is complete.

*Response.* Long-term planning may identify potential corridors suitable for consideration for future construction. However, the agency does not intend to designate routes on a motor vehicle use map until such routes actually exist, have been analyzed and evaluated, and are available for public use. Section 212.54 of the final rule provides for revision of designations as needed to meet changing conditions. New routes may be constructed and added to the system following public involvement and site-specific environmental analysis. Such revisions may also include closures or changes in designations.

*Comment.* Many respondents supported public involvement in the route designation process. Some requested that local residents and private landowners receive a greater voice in decisions affecting their use. Other respondents requested that county governments, State tourism offices, or other agencies receive formal recognition as participants in agency decisionmaking. One respondent asked that OHV access be subject to a public vote.

*Response.* The proposed and final rules require public involvement in the designation process (§ 212.52), and coordination with appropriate Federal, State, county, local, and tribal governments in designating roads, trails, and areas for motor vehicle use (§ 212.53). Designation of a system of motor vehicle routes and areas will be made with public involvement and coordination with Federal, State, local, and tribal governments. Most NFS roads are intertwined with networks of State and county roads (often crossing NFS lands), and cooperative planning among affected agencies is essential. Nothing in the final rule, however, can relieve the Forest Service of the ultimate responsibility for decisions regarding management of NFS lands.

*Comment.* Many respondents requested that the Forest Service allocate sufficient funds for management of motor vehicle use on National Forests, particularly for the process of route and area designation envisioned in the proposed rule. Many asked the agency to pursue all available sources of funding, including the Recreational Trails Program and gasoline tax revenues. Some respondents insisted that inadequate funding not be used as an excuse to close routes and restrict motor vehicle access. Others stated that the rule was pointless without adequate funding.

*Response.* The issue regarding funding is beyond the scope of this final rule. Forest Service appropriations are authorized by Congress. The Forest Service is committed to using whatever funds it has available to accomplish the purposes of this final rule in a targeted, efficient manner. The agency makes appropriate use of all other sources of available funding, and has a number of successful cooperative relationships with State governments. Volunteer agreements with user groups and others have proven successful in extending agency resources for trail construction, maintenance, monitoring, and mitigation. Regardless of the level of funding available, the Department believes that the final rule provides a better framework for management of motor vehicle use on National Forests and National Grasslands. While availability of resources for maintenance and administration must be considered in designating routes for motor vehicle use (§ 212.55), cooperative relationships and volunteer agreements may be included in this consideration.

*Comment.* Some respondents offered specific suggestions for consideration during route and area designation, including conversion of low-standard roads to motorized trails, provision of

parking and trailhead facilities, reopening of closed roads, design of loop and long-distance trail systems to meet user needs, and integration of designated routes with roads and trails managed by local governments, States, and other Federal agencies.

Some respondents suggested consideration of specific environmental impacts during route and area designation, including introduction of invasive species, impacts to cultural activities of American Indians, quality of the user experience, and Recreation Opportunity Spectrum (ROS) designations in land management plans. Other respondents suggested specific areas to avoid in route and area designation, including high alpine areas, wetlands, riparian areas, and roadless areas.

*Response.* The Department agrees that many of these considerations may be important in designating routes and areas at the local level. Section 212.55 of the final rule enumerates the criteria for designating roads, trails, and areas pursuant to the final rule. Specific considerations (such as geography, user demands, and environmental impacts) will vary from place to place, and even route to route, across the NFS. Responsible officials, working closely with the public, should consider local circumstances in applying the criteria for designating roads, trails, and areas pursuant to the final rule.

*Comment.* Some respondents suggested a no-net-loss policy for motor vehicle routes (every route closed must be replaced by a new route of the same length and character), a specific goal for available routes (such as four miles of motor vehicle trail per square mile), or a general policy to develop all access opportunities close to urban areas.

*Response.* The Department disagrees with establishing any of these principles as national policy. Designation decisions are best left to local managers, working closely with State, tribal, and local governments, users, and other members of the public and informed by site-specific evaluation of environmental impacts.

*Comment.* Some respondents stated that regulations are effective only if they are enforced, and questioned whether the agency was capable of enforcing motor vehicle restrictions due to limited numbers of law enforcement officers.

*Response.* Forest Service law enforcement personnel play a critical role in ensuring compliance with laws and regulations, protecting public safety, and protecting National Forest resources. The Forest Service also maintains cooperative relationships with many State and local law

enforcement agencies that provide mutual support across jurisdictional boundaries. Education and cooperative relationships with users support enforcement efforts by promoting voluntary compliance. The final rule will not increase the agency's budget or the number of law enforcement officers. However, the final rule will enhance enforcement by substituting a regulatory prohibition for closure orders and providing for a motor vehicle use map supplemented by signage.

*Comment.* Some respondents questioned the use of contractors and volunteers to map and maintain trails, and to report violations of motor vehicle regulations.

*Response.* The Forest Service utilizes a mix of agency personnel, contractors, volunteers, and cooperators to accomplish many elements of its mission. Without the support of cooperators and volunteers and the services of contractors, the agency would be unable to provide the same level of service to the public or care for the lands entrusted to it within its current budget. Like all law enforcement agencies, the Forest Service depends on citizen reports of violations as a critical component of its enforcement program.

*Comment.* Some respondents asked the Forest Service to ensure representation of OHV enthusiasts and riders among agency staff responsible for OHV management.

*Response.* The Forest Service uses competitive civil service procedures to select the best qualified applicant for each position, based on the knowledge, skills, and abilities necessary to perform the job. While ability to use government equipment may be a selective factor for some positions, the agency does not hire personnel based on their outside recreational interests. Nevertheless, there are Forest Service employees who are OHV riders.

*Comment.* Some respondents asked the Forest Service to ensure adequate maintenance for motor vehicle trails, rather than closing them.

*Response.* The Forest Service maintains NFS roads and NFS trails in accordance with their management objectives and the availability of funds. Volunteers and cooperators maintain many trails. The agency collects fees for use of some developed recreational facilities, most of which are retained and spent at the site where they are collected. Unfortunately, resources are still limited, and the Forest Service has a substantial backlog of maintenance needs, even before adding many user-created routes to the system. In some cases, an extended lack of maintenance can lead to deterioration of a road or

trail to the point that it must be closed to address user safety or to prevent severe environmental damage. The Forest Service actively tries to avoid closures by encouraging volunteer agreements and cooperative relationships with user groups.

*Comment.* Some respondents requested clarification of the rules applicable to motor vehicle use while designation is pending. Some asked that current rules remain in effect. Others requested immediate closure of all user-created routes. Some respondents sought to continue using and maintaining existing trails while designation is pending.

*Response.* The final rule's prohibition on motor vehicle use off the designated system (§ 261.13) goes into effect on an administrative unit or Ranger District once that unit or District has designated those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use and published a motor vehicle use map identifying those roads, trails, and areas (§ 212.56). Until designations for a unit or District are complete and a motor vehicle use map identifying those designations is published, existing travel management policies, restrictions, and orders remain in effect. Forest Supervisors may continue to issue travel management orders pursuant to part 261, subpart B, and impose temporary, emergency closures based on a determination of considerable adverse effects pursuant to § 212.52(b)(2) of the final rule. The Department does not believe that immediate closure of all user-created routes, without local evaluation and public input, is necessary or appropriate. Use and maintenance of NFS roads and NFS trails consistent with current travel management policies and management objectives may continue. Construction and maintenance of roads or trails without a permit are prohibited by existing regulations (§ 261.10(a)).

The Department expects that some administrative units or Ranger Districts will complete route and area designation before others and that the prohibition on cross-country motor vehicle use in § 261.13 will go into effect on different units and Ranger Districts at different times. This variation in travel management mirrors the existing situation, in which some units are open to cross-country motor vehicle use, while others restrict motor vehicles to designated routes and areas. Over the next few years, all administrative units and Ranger Districts will institute a system of designated routes and areas.



*Comment.* Some respondents suggested that the Forest Service require vehicle registration, license plates, noise abatement, and safety equipment for all motor vehicles using NFS lands. Others suggested requiring licensing and safety training for all riders.

*Response.* State traffic laws apply on NFS roads as provided for in 36 CFR 212.5(a)(1). State governments have long taken the lead in establishing registration, safety, and licensing requirements for motor vehicles and motor vehicle operators, providing a consistent framework for users within State boundaries. The Department wholeheartedly supports this framework. The Department believes a separate registration or licensing process for operators for the NFS would be confusing, inefficient, and intrusive.

The Department notes that some States have no requirements regarding minimum age, safety equipment, and noise levels for OHVs. Some National Forests have experienced serious injuries and fatal accidents involving OHVs, some of which involve young children. The Forest Service will continue to regulate OHV riders to a certain degree in existing regulations at § 261.13, recodified as § 261.15 in the final rule (for example, by requiring a headlight and taillight when riding after dark and by providing for incorporation of State law pertaining to use of motor vehicles off roads). At this time, however, the Department is not prepared to issue or enforce new national standards for operators or equipment on NFS lands. As designations are completed and management of designated roads, trails, and areas continues, the Department may consider developing some national safety standards for OHVs at a later date.

Noise is a particularly important issue affecting OHV use nationally. The Forest Service anticipates developing a national standard for OHV noise levels in a future rulemaking.

*Comment.* Some respondents suggested that the Forest Service charge a fee for OHV use on NFS lands and retain the funds for route maintenance and enforcement. Other respondents objected to any fees for public access to Federal land. One respondent suggested a surcharge on OHV manufacturers.

*Response.* These comments are beyond the scope of this final rule, which governs designation of roads, trails, and areas for motor vehicle use. Forest Service authority to charge and retain fees for use of recreational facilities and services is contained in the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–

6814). The agency has no authority to tax manufacturers.

#### *Proposed Rule Preamble*

*Comment.* Some respondents disagreed with the Forest Service's rationale for the proposed rule and urged the agency not to adopt a final rule. These respondents stated that a prohibition on cross-country motor vehicle use will harm small businesses, recreation users, the tourism industry, local governments, local economies, low-income residents, families with children, and people with disabilities, and reduce public access to Federal lands. Some respondents stated that any environmental impacts and other problems associated with cross-country motor vehicle use result from poor Forest Service management and should be addressed by better implementation and enforcement of existing rules, rather than additional regulation. Others contended that natural forces, such as fire and flood, have far greater environmental impact than OHVs and that the motor vehicle regulation is not needed.

*Response.* The Department disagrees with these assertions. Unregulated cross-country motor vehicle use may have been appropriate on some National Forests when these vehicles were less numerous, less powerful, and less capable of cross-country travel. Today, however, the proliferation of user-created routes is a major challenge on many National Forests and examples of significant environmental damage, safety issues, and user conflicts are well established. The Department believes that a well-planned, well-designed system of designated roads, trails, and areas, developed in coordination with Federal, State, local, and tribal governments and with public involvement, offers better opportunities for sustainable long-term recreational motor vehicle use and better economic opportunities for local residents and communities.

*Comment.* Some respondents stated that the proposed rule will harm the nonmotorized recreation industry by encouraging OHV use. Other respondents stated that the proposed rule does not do enough to address the threat of OHVs, unauthorized routes, and continuing damage to the environment, and should be strengthened. Some asked the Forest Service to explain how its maintenance backlog can be reconciled with the stated goal of enhancing opportunities for motorized recreation.

*Response.* This final rule does not encourage or discourage motor vehicle use, but rather requires designation of

roads, trails, and areas for motor vehicle use. The Department believes that a well-designed system of routes and areas designated for motor vehicle use can reduce maintenance needs and environmental damage, while enhancing the recreational experience for all users, both motorized and nonmotorized.

*Comment.* Some respondents called for clear and consistent national standards for motor vehicle use and route and area designation. They stated that the proposed rule allows too much discretion for local Forest Service managers to make designation decisions, which may result in inconsistent and ineffective decisionmaking. Other respondents stated that the final rule should retain flexibility in local decisionmaking, rather than establishing a one-size-fits-all national policy.

*Response.* The final rule provides a national framework for local decisionmaking. The rule includes definitions, procedures, and criteria for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, and a prohibition on motor vehicle use that occurs off the designated system or that is inconsistent with motor vehicle designations. The Department expects the roughly 300,000 miles of NFS roads currently open to highway-legal motor vehicle use to be designated for that purpose. However, the rule retains flexibility at the local level to determine, with public involvement, appropriate motor vehicle use on local NFS roads, on NFS trails, and in areas on NFS lands. The Department believes that decisions about specific routes and areas are best made by local officials with knowledge of those routes and areas, the local environment, and site-specific tradeoffs, with public involvement and in coordination with appropriate Federal, State, local, and tribal governments.

*Comment.* Some respondents asked the Forest Service to commit to designating enough OHV routes to accommodate current and future demand.

*Response.* Provision of recreational opportunities and access needs are two of several criteria the responsible official must consider under § 212.55 of the final rule in designating routes for motor vehicle use. National Forests are popular with many Americans for many uses. It is not possible to accommodate all user demands on all National Forests while also protecting water quality, wildlife habitat, and other natural resources that people come to enjoy. Forest Service managers must balance user interests against the other criteria



for designating routes and areas under the final rule.

*Comment.* Some respondents stated that local government, not the Forest Service, should decide where roads and vehicle access are needed to serve local communities and protect public health and safety.

*Response.* The Department believes that coordination with local governments is essential in designating a system of motor vehicle routes and areas on NFS lands. The final rule requires coordination with appropriate local governmental entities when designating routes and areas for motor vehicle use and provides for designation decisions to be made by Forest Service officers at the local level to ensure that they take local needs into account. However, the Forest Service retains ultimate responsibility, as provided by Congress, for management of uses on the NFS.

Forest Service policy (FSM 7703.3) is to seek to transfer jurisdiction of NFS roads to public road authorities when (1) more than half of the use is likely to be non-Forest Service-generated traffic; (2) the road is necessary and used for mail, school, or other local government purposes, or (3) the road serves year-long residents within or adjacent to the National Forests.

*Comment.* Some respondents stated that the language of the preamble to the proposed rule, particularly the shift of regulations governing OHV use from part 295 (Use of Motor Vehicles Off National Forest System Roads) to part 212 (Administration of the Forest Transportation System), reflects a change in the agency's perception of motor vehicle use on NFS lands. These respondents asked the Forest Service to recognize motor vehicle use as a legitimate recreational pursuit, not just as a transportation issue.

*Response.* The Department recognizes this concern. Motor vehicles serve a variety of functions on National Forests. Motor vehicles are used in commercial and natural resource management activities, including maintaining utility corridors, mining, and timber sales. Motor vehicles on NFS lands provide access to private land, recreation destinations, and destinations off NFS lands. Motor vehicles are used in support of other recreational activities, such as hunting and camping. Motor vehicles are also used as a recreational experience in their own right, such as for trail riding and driving for pleasure. These uses overlap and are not always clearly distinguishable. To create a comprehensive system of travel management, the final rule consolidates regulations governing motor vehicle use

in one part, 212, entitled "Travel Management." Motor vehicles remain a legitimate recreational use of NFS lands.

*Comment.* Some respondents objected to the preamble's use of the term "off-road vehicle" in reference to E.O. 11644 and E.O. 11989, and asked the agency to use "off-highway vehicle." Other respondents objected to the latter term and preferred "off-road vehicle." Some respondents requested that specific classes of vehicles, such as side-by-sides, sport utility vehicles, and motorcycles, be included or excluded from the definition of OHV.

*Response.* The final rule addresses all motor vehicle use on NFS roads, on NFS trails, and in areas on NFS lands, from passenger cars to ATVs to motorcycles. The final rule is not limited to OHVs, in part because OHVs are not always clearly distinguishable from passenger vehicles (today the family car may be quite capable of off-highway travel). Local units are responsible for designating routes and areas for motor vehicle use, including which routes and areas are designated for which vehicle classes. In response to comments, and because the agency has used the term extensively in communications, the final rule has added a definition of "off-highway vehicle." This definition is consistent with the definition of "off-road vehicle" used in E.O. 11644.

*Comment.* Some respondents asked the Forest Service to include bicycles and horses within the definition of "off-highway vehicle" and regulate these uses like motor vehicles.

*Response.* OHVs are motor vehicles. Since bicycles and horses are not motor vehicles, they are not included in the definition of "off-highway vehicle." Similarly, this rule governs designation of routes and areas for motor vehicle use and does not apply to nonmotorized uses, such as bicycles and horses.

At this time, the Department does not see the need for regulations requiring establishment of a system of routes and areas designated for nonmotorized uses. Local Forest Service officials may choose to designate routes and areas for nonmotorized uses and enforce those designations with an order issued under 36 CFR part 261, subpart B. On some National Forests, and portions of others, bicycles and/or equestrians are restricted to designated routes, or even prohibited altogether. On other National Forests, cross-country use of bicycles and horses is permitted.

*Comment.* Some respondents suggested that E.O. 11644 and E.O. 11989 conflict with the Federal Land Policy and Management Act (FLPMA) and the Multiple Use-Sustained Yield Act (MUSY), are outdated, and do not

reflect changes in use and technology of motor vehicles. These respondents asked the Forest Service not to rely on the E.O.s in promulgating regulations governing designation of routes and areas for motor vehicle use.

*Response.* The Department disagrees that the E.O.s conflict with FLPMA and MUSY. Both statutes give the Forest Service broad authority to manage NFS lands for multiple uses. MUSY defines "multiple use" in part as "management of all the various \* \* \* resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people \* \* \*." MUSY specifically provides "that some land will be used for less than all of the resources" (16 U.S.C. 531(a)). Neither Act directs that all NFS lands be open to all uses.

E.O. 11644 and E.O. 11989 broadly direct Federal land management agencies to regulate OHVs in conformance with certain criteria. As discussed in the preamble, the environmental concerns that prompted the E.O.s are more, not less, pressing with changes in OHV use and technology.

Executive orders issued by the President of the United States provide policy direction to all Federal agencies. The Department conforms its policy to executive orders and believes that it is appropriate to take applicable executive orders, such as E.O. 11644 and E.O. 11989, into account in promulgating regulations and issuing directives.

*Comment.* Some respondents stated that the proposed rule is not consistent with the letter and spirit of E.O. 11644 and E.O. 11989, and must not convert their mandatory language to discretionary language.

*Response.* The Department disagrees with this assertion. Section 3(a) of E.O. 11644 directs the Forest Service to develop and issue regulations "to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted \* \* \*." Section 9(b) of E.O. 11644 specifically authorizes the Forest Service to adopt the policy to designate those areas or trails that are suitable for motor vehicle use and to close all other areas and trails to that use. Consistent with these provisions, the final rule requires establishment of a system of routes and areas designated for motor vehicle use and prohibits motor vehicle use off the designated system. The provisions in the final rule governing exemptions from designations, public involvement, criteria for designations, designations in

wilderness areas, identification of designated routes and areas, monitoring, and over-snow use track E.O. 11644 and E.O. 11989. See the response to comments on §§ 212.52 and 212.55 for the relationship between specific sections of the rule and the Executive orders.

*Comment.* Some respondents interpreted the preamble to the proposed rule to imply that every National Forest must designate areas for motor vehicle use. Some respondents supported this idea. Others asked the agency to clarify that there is no such requirement.

*Response.* The proposed rule was never intended to require each National Forest to have areas designated for motor vehicle use. To clarify this point, the summary for the final rule states that it requires designation of those roads, trails, and areas that are open to motor vehicle use. Some National Forests do not allow motor vehicle use off NFS roads. This final rule does not require them to change their policy.

*Comment.* Several respondents addressed the preamble's discussion of use of OHVs on NFS roads managed at various maintenance levels. Some respondents asked the Forest Service to allow and some asked the agency to prohibit non-highway-legal vehicles on NFS roads at maintenance levels 3, 4, and 5.

*Response.* Road designation decisions will determine road management objectives and maintenance levels, rather than vice versa. However, in many cases, existing road management objectives and maintenance levels, established through travel planning and roads analysis in consultation with State and local governments, already establish appropriate motor vehicle use. The Department anticipates the need to mix highway-legal and non-highway-legal traffic on some NFS roads at maintenance levels 3, 4, and 5. Such designation decisions will be advised by professional engineering judgment, and will include design features deemed appropriate by engineering studies.

*Comment.* Some respondents objected to the agency's rationale for exempting snowmobiles from designations made under § 212.51 of the proposed rule, on the grounds that snowmobiles have documented impacts on wildlife, skiers, and other resource values. Some respondents asked the agency to include a noise level limit for snowmobiles and other provisions specific to snowmobiles. Other respondents asked the Forest Service to remove provisions governing snowmobiles from the rule and exclude snowmobiles from the definition of "off-highway vehicle."

*Response.* Snowmobiles are "off-road vehicles" under E.O. 11644 and subject to the direction "to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted" (E.O. 11644, Sec. 3(a)). Moreover, snowmobiles are "motor vehicles" under this final rule. Since this rule regulates motor vehicle use, the rule must address snowmobiles.

However, the Department believes that cross-country use of snowmobiles presents a different set of management issues and environmental impacts than cross-country use of other types of motor vehicles.

Therefore, the final rule exempts snowmobiles from the mandatory designation scheme provided for under § 212.51, but retains a manager's ability to allow, restrict, or prohibit snowmobile travel, as appropriate, on a case-by-case basis (§ 212.81). Restrictions and prohibitions on snowmobile use will be enforced under § 261.14, rather than through issuance of an order under part 261, subpart B.

The definition of "snowmobile" in the proposed rule encompassed large vehicles not commonly referred to as "snowmobiles," but excluded over-snow vehicles also capable of summer travel. In order to improve clarity and ensure equitable treatment of over-snow vehicle use, the final rule replaces the exemption for snowmobiles with an exemption for "over-snow vehicles," a broader term that includes snowmobiles, as well as other vehicles designed for over-snow travel. The final rule adds language to § 212.81(c) to clarify that the designation process applies to over-snow vehicles only where the local responsible official proposes to establish restrictions or prohibitions on use of over-snow vehicles under this subpart.

The Department expects that management of winter recreational use will continue to be an important issue on many National Forests. Nothing in this final rule limits the ability of Forest Service managers to take appropriate action to regulate snowmobile use, or other winter uses, or precludes the Department from promulgating regulations on snowmobile use at some point in the future.

### Specific Sections by Part

#### Part 212—Travel Management

##### Subpart A—Administration of the Forest Transportation System

Section 212.1. This section of the rule includes the definitions for part 212,

which governs administration of the forest transportation system, designation of roads, trails, and areas for motor vehicle use, and use by over-snow vehicles.

Definition for "administrative unit."

*Comment.* Respondents suggested clarifying that this definition embraces all NFS lands, including National Recreation Areas and other Congressionally designated areas.

*Response.* National Forests and National Grasslands include many classifications, including National Recreation Areas and Congressionally Designated Areas. The purpose of including a definition for administrative unit was not to delineate the types of areas within the NFS, but rather to refer to a discrete management unit within the NFS for purposes of triggering designation of motor vehicle use under the final rule. To ensure that the definition for "administrative unit" encompasses all NFS lands, the final rule adds purchase units, land utilization projects, and the Columbia River Gorge National Scenic Area to the list of administrative units. The final rule also adds "or other comparable units of the National Forest System" to the definition so that if Congress establishes new administrative units of the NFS, they will be included within this definition.

Definition for "all-terrain vehicle," "considerable adverse effects," "motorcycle," and "off-highway vehicle."

*Comment.* Although not included in the proposed rule, respondents suggested including these definitions in the final rule.

*Response.* The Department agrees that it would be helpful to add a definition for "off-highway vehicle," since cross-country travel by OHVs is a major concern of this final rule. Therefore, the Department is adding a definition for "off-highway vehicle" to the final rule. The Department is not adding a definition for "all-terrain vehicle" and "motorcycle" because they are only two of many different types of OHVs and because the final rule does not distinguish among types of OHVs. The Department also is not adding a definition for "considerable adverse effects" because a determination of considerable adverse effects caused by motor vehicle use for purposes of effecting a temporary, emergency closure under § 212.52(b)(2) of the final rule depends on specific factual circumstances in certain contexts. Specific circumstances may include public safety or soil, vegetation, wildlife, wildlife habitat, or cultural

resources associated with a particular road, trail, or area.

Definition for "area."

*Comment.* Some respondents stated that the final rule should allow large areas to be designated for motor vehicle use and should provide for consideration of all NFS lands as designated areas.

Other respondents stated that the final rule should not allow designation of areas for motor vehicle use. If such designation is allowed, these respondents believed that only areas much smaller than a Ranger District should be designated, after site-specific analysis demonstrating no environmental impacts, and no Forest should be required to have a designated area.

*Response.* Areas designated for motor vehicle use are not intended to be large or numerous. The Department agrees that the definition in the proposed rule, "a discrete, specifically delineated space that is smaller than a Ranger District," is too broad to effectuate this intent. Therefore, the Department has revised the definition of "area" in the final rule to read, "a discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District." Only a few areas currently designated for motor vehicle use, such as the Oregon Dunes National Recreation Area on the Siuslaw National Forest, encompass a significant portion of a Ranger District. Other designated areas are expected to be much smaller.

While areas are not intended to be large or numerous, the Department believes that it is appropriate to designate some areas for motor vehicle use. These areas would have natural resource characteristics that are suitable for motor vehicle use, or would be so significantly altered by past actions that motor vehicle use might be appropriate. Routes and areas under the final rule will be designated at the local level, based upon appropriate environmental analysis. Federal law does not require the Forest Service to demonstrate that there are no environmental impacts from designation of areas.

Under the final rule, no administrative unit or Ranger District will be required to designate an area.

*Comment.* Some respondents stated that the final rule should not include a presumption for designation of previously disturbed sites. Instead, these respondents believed the rule should provide examples of sites that would not be appropriate.

*Response.* Neither the proposed nor the final rule establishes a presumption for designation of previously disturbed

sites. Rather, the preamble to the proposed rule generally discussed possible characteristics of an area. The characteristics of an area are not enumerated in the definition of an area to give the agency the flexibility to designate areas for motor vehicle use as appropriate, given the variety of natural features, resources, and uses on NFS lands.

*Comment.* Some respondents stated that the final rule should expand the definition of area to encompass specific uses, such as grazing, hunting, firewood gathering, camping, and religious, customary, and cultural practices.

Other respondents asked the agency to encourage designation of areas wherever there is a high density of existing routes, to save time in conducting an inventory of existing routes.

*Response.* It is not necessary to expand the definition of area to encompass specific uses, such as grazing. The final rule provides for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, and prohibits motor vehicle use other than in accordance with those designations. Motor vehicle use that is specifically authorized pursuant to a written authorization issued under Federal law (§ 261.13(h) of the final rule) is exempted from this prohibition. In addition, in making these designations, the responsible official must recognize valid existing rights (§ 212.55(d) of the final rule).

To address specific local needs for limited cross-country motor vehicle use for big game retrieval or dispersed camping, the Department is adding a paragraph to § 212.51 of the final rule. This new paragraph provides that in designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of big game retrieval or dispersed camping.

Some areas of high route density may be appropriate for designation as areas. Others will not. The Department believes that designation decisions should be made at the local level, based on site-specific evaluation of local conditions and public involvement.

Definition for "designated road, trail, or area."

*Comment.* Some respondents stated that the final rule should not make a use map a part of the travel management atlas due to confusion that may result if the atlas is not updated. Respondents further commented that this requirement is redundant, since the

definition of "use map" already states that it is part of a travel management atlas.

*Response.* The Department disagrees that including a use map in a travel management atlas will lead to confusion if the atlas is not updated because in the final rule revisions to designations will be reflected on a motor vehicle use map (§ 251.56).

The Department agrees that it is unnecessary to state in the definition for designated road, trail, or area that a motor vehicle use map is contained in a travel management atlas because the definition for travel management atlas states that it includes the motor vehicle use map or maps. Therefore, the Department is removing the phrase, "contained in a travel management atlas" from the definition for designated road, trail, or area. For the same reason, the Department is removing the phrase "that is part of a travel management atlas" from the definition for "motor vehicle use map." Similarly, the Department is removing the phrase "that is [or 'are'] included in a forest transportation atlas" from the definitions for "forest road or trail" and "forest transportation system" because the definition for "forest transportation atlas" states that it displays the system of roads, trails, and airfields of an administrative unit.

*Comment.* Some respondents requested that the final rule address designation of routes for nonmotorized as well as motorized uses and stated that the proposed rule text contradicts the preamble in this regard.

*Response.* The purpose of this rule is to provide better and more consistent management of motor vehicle use on National Forests and National Grasslands. Regulation of nonmotorized use is beyond the scope of this rulemaking. The Department agrees that discussion of nonmotorized use in the preamble may have led to some confusion in this regard. For management and enforcement purposes, it would be better for the use map to be dedicated to motor vehicle uses. As stated above, in the final rule, the Department is changing the term "use map" to "motor vehicle use map." Only motor vehicle uses will be reflected on this map.

The Department wishes to clarify that designation of a road, trail, or area for motor vehicle use does not establish that use as dominant or exclusive of other uses of that road, trail, or area.

*Comment.* Some respondents asked the final rule to clarify whether OHV use on designated roads is permissible.

*Response.* In the final rule, designation decisions, including

designations by vehicle class, will be made at the local level. The Department anticipates the need to mix highway-legal and non-highway-legal traffic on some NFS roads. These designation decisions will be advised by engineering judgment or an engineering study, as appropriate.

Definition for "forest transportation atlas."

*Comment.* Some respondents stated that a forest transportation atlas should include all open roads and trails, closed roads and trails, user-created roads and trails, rights-of-way, and public and private roads.

*Response.* The final rule is not substantively changing the definition of a forest transportation atlas. However, the final rule simplifies the definition by deleting the list of possible forms (such as geospatial and tabular) the data might take and the reference to the data's purpose. In the final rule, a forest transportation atlas is defined as a display of the system of roads, trails, and airfields of an administrative unit.

Forest roads and forest trails are included in a forest transportation atlas. Forest roads and forest trails are wholly or partly within or adjacent to and serving the NFS that the Forest Service determines are necessary for the protection, administration, and utilization of the NFS and the use and development of its resources.

Roads, trails, and areas designated for motor vehicle use under the final rule will be reflected on a motor vehicle use map. Under the final rule, motor vehicle use off designated routes and outside designated areas will be prohibited by § 261.13.

A travel management atlas will contain a forest transportation atlas and a motor vehicle use map or maps.

Definition for "motor vehicle."

*Comment.* Some respondents stated that the final rule should clarify that both tracked and wheeled vehicles are included in this definition.

*Response.* The definition for motor vehicle is broad enough to include both tracked and wheeled vehicles. The definition excludes only vehicles operated on rails and wheelchairs and mobility devices that meet certain criteria.

Definitions for "new road construction," "road reconstruction," and "forest transportation facility."

Definitions for "new road construction" and "road reconstruction" were not included in the proposed rule. However, the Department is making a technical change to conform these definitions in § 212.1 to the definition for "construction" in the Federal Highway

Act, 23 U.S.C. 101(a)(3). Consistent with that statute, "road construction or reconstruction" will be defined in § 212.1 as "supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road." This change is consistent with other technical changes made to definitions in part 212 to make them conform to 23 U.S.C. 101.

The Department is also making a technical change to conform the definition for "forest transportation facility" to the other definitions in this final rule by replacing the reference to "classified roads" with "forest roads." In addition, the Department is changing the term "log transfer facilities" to "marine access facilities" in this definition because these facilities, which connect roads to the Pacific Ocean, are used for more than transferring logs. These facilities are used for marine access generally, including access for recreational purposes.

Definition for "road."

*Comment.* Some respondents stated that the final rule should include in the definition for a road the phrase, "constructed, receiving regular mechanical maintenance, and suitable for use by a standard passenger car." Other respondents expressed support for the flexibility to identify and manage a road as a trail.

*Response.* The definition for a road in part 212 applies to subpart A, Administration of the Forest Transportation System, subpart B, Designation of Roads, Trails, and Areas for Motor Vehicle Use, and subpart C, Use by Over-Snow Vehicles. Given the broad application of the definition, the Department believes it would be unduly restrictive and inaccurate to add the phrase, "constructed, receiving regular mechanical maintenance, and suitable for use by a standard passenger car," to the definition for a road. Not all roads on NFS lands are constructed. Not all roads on NFS lands need regular mechanical maintenance, and not all roads on NFS lands are suitable for use by a passenger car.

The definitions for roads and trails give the agency the flexibility to identify and manage as a trail routes that are wider than 50 inches. Some trails on NFS lands are wider than 50 inches and may have the physical characteristics of a road. Some trails are open to some full-sized vehicles. Four-wheel-drive travel ways and trails originally constructed as roads or railroad grades are all part of the Forest Service trail system. The current definitions for a road and trail, which embrace the

diverse array of trail opportunities, are retained in the final rule.

Definition for "road or trail under Forest Service jurisdiction."

*Comment.* Some respondents expressed concern that this definition would unnecessarily limit Forest Service authority to enforce traffic laws and regulate use on valid rights-of-way and State and county roads. Other respondents observed that the Forest Service has the authority and a duty to protect NFS lands underlying these routes.

*Response.* The final rule provides for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use. The Department wishes to clarify that this final rule does not in any way affect the Forest Service's jurisdiction to enforce traffic laws, to protect NFS lands underlying routes, or to regulate use, including use on valid rights-of-way. To simplify the definitions in the final rule, the Department has moved the phrase "other than a road or trail that has been authorized by a legally documented right-of-way held by a State, county, or local public road authority" from the definition for "road or trail under Forest Service jurisdiction" to the definitions for "National Forest System road" and "National Forest System trail," and deleted the definition for "road or trail under Forest Service jurisdiction."

Motor vehicle use on State, county, or municipal roads and trails authorized by a legally documented right-of-way is subject to the control of that State, county, or local public road authority. These roads and trails are not subject to designations made under the final rule, or to the prohibition on motor vehicle use off designated routes and outside designated areas.

*Comment.* Some respondents stated that private rights-of-way should be excluded from the definition of a road or trail under Forest Service jurisdiction.

*Response.* Section 212.55(d) of the final rule requires responsible officials in making designations to recognize valid existing rights, including valid outstanding or reserved rights-of-way for a road or trail. The Forest Service may not regulate uses within the scope of these rights-of-way if the agency has not acquired the right to do so. However, the agency may regulate use on these rights-of-way if it has obtained the right to do so. Some private rights-of-way may be forest roads. Others may not be "necessary for the protection, administration, and utilization of the National Forest System," and are not forest roads. Because there are many different local permutations involving

different rights, some of which include Forest Service regulation of some uses, the Department does not believe it would be appropriate to exclude these rights-of-way from the definition of a NFS road or NFS trail.

In the definition of "road" in the final rule, the Department is removing the sentence, "A road may be a forest road, a temporary road, or an unauthorized or unclassified road," and is making a corresponding change in the definition of "trail." Some private roads are not forest roads, temporary roads, or unauthorized roads. These roads may be included in a forest transportation atlas, but are not NFS roads and will not be subject to designation under this final rule.

*Comment.* Some respondents objected to proposed language regarding roads or trails "which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477." These respondents asserted that this language would violate the Congressional moratorium on rulemaking concerning recognition of these rights-of-way. Other respondents requested clear delegation of authority for applying this exclusion, and clarification of the process and criteria to be used in ascertaining whether such a right-of-way exists. Some respondents suggested that the final rule establish that all routes in existence before 1976 are R.S. 2477 rights-of-way.

*Response.* The exemption for a road or trail "which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477" has been removed from the definition for a road or trail under Forest Service jurisdiction in the final rule. As stated above, the remaining text in that definition has been moved to the definitions for "National Forest System road" and "National Forest System trail" in the final rule. The exemption for legally documented rights-of-way held by State, county, or other local public road authorities covers rights-of-way under R.S. 2477 that have been adjudicated through the Federal court system or otherwise formally established. The Department does not want to give the appearance of establishing the validity of unresolved R.S. 2477 right-of-way claims in determining the applicability of this final rule.

*Comment.* Some respondents stated that the final rule should address routes

that cross private property or otherwise change jurisdiction. These respondents expressed concern that popular, user-created routes on NFS lands could be closed under the final rule if they are accessible only from private land.

*Response.* Many roads and trails on NFS lands originate on or cross private property. Where the United States holds a right-of-way across private property providing access to the National Forest, these routes are NFS roads and NFS trails, and subject to possible designation under the final rule.

Some user-created roads and trails on NFS lands cross private property. The agency generally will not consider a road or trail on NFS lands for designation unless there is legal public access to that road or trail. Where access to NFS lands from private property is needed, the Forest Service will seek rights-of-way from willing sellers. If public access cannot be secured, these routes generally will be closed to motor vehicles under the final rule.

The Department supports public access to Federal land and supports the rights of private landowners to control access to their land. A designated system of motor vehicle routes should be based on legal public access.

Definition for "snowmobile."

*Comment.* Some respondents suggested that the definition for snowmobile in the proposed rule be broadened to include other over-snow vehicles, such as tracked ATVs and grooming machines.

*Response.* The proposed rule defined snowmobile as "A motor vehicle that is designed exclusively for use over snow and that runs on a track or track and/or a ski or skis." This definition encompassed large vehicles, such as snow cats, not commonly referred to as snowmobiles. However, the proposed definition excluded vehicles capable of conversion to over-snow use, such as ATVs with tracks. Since the proposed definition refers only to the vehicle itself, and not to its use, the proposed rule could be read to allow use of snowmobiles in the absence of snow off routes and outside areas designated for motor vehicle use. The Department believes that over-snow use by tracked vehicles has similar environmental effects, regardless of whether the vehicle is designed exclusively for use over snow.

Consequently, the final rule replaces the exemption and definition for snowmobiles with an exemption and definition for over-snow vehicles (which would include snowmobiles). The final rule also removes the word "exclusively" from the definition, while adding "while in use over snow," so

that the final definition for over-snow vehicle includes motor vehicles that are designed for use over snow and that run on a track or track and/or a ski or skis, while in use over snow. Use by over-snow vehicles may be allowed, restricted, or prohibited under part 212, subpart C.

Definition for "temporary road or trail."

*Comment.* Some respondents stated that roads and trails in this category must be managed as temporary and removed as soon as their purpose is served. Otherwise, these respondents believed that they should be included in the forest transportation atlas. Other respondents stated that the final rule should clarify use and designation of temporary routes and explicitly prohibit unauthorized motor vehicle use.

*Response.* The Department agrees that temporary roads and trails must be managed as temporary. In the rule, a temporary road or trail is defined as a road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization. The Forest Service requires that temporary roads and trails be decommissioned once the emergency that justified them or their written authorization is no longer in effect.

NFS roads and NFS trails are the only types of routes that will be designated for motor vehicle use under this final rule. Temporary roads and trails by definition are not forest roads or trails and therefore cannot be NFS roads or NFS trails. Therefore, temporary roads and trails will not be designated under the final rule.

Some motor vehicle use on temporary roads may be exempted from designations and the corresponding prohibition under the rule, since § 212.51(a)(5) and (a)(8) and § 261.13(e) and (h) of the final rule exempt emergency motor vehicle use and motor vehicle use allowed under a written authorization.

After designations are complete on an administrative unit or a Ranger District, motor vehicle use on that unit or District that is inconsistent with the designations will be prohibited under § 261.13 of the final rule.

Definition for "trail."

*Comment.* Some respondents requested that the final rule define trails as nonmotorized, or at least clarify whether motor vehicle use is permitted on trails. Other respondents asked that the definition of trails not exclude use by full-sized vehicles.

Some respondents stated that the final rule should clearly distinguish between roads and trails and suggested a variety of criteria for that purpose, including

setting a 60-inch width for roads to accommodate newer side-by-side vehicles on trails, or defining trails as having only a single track. Other respondents stated that the distinction between roads and trails should not be based on width.

Respondents suggested several new terms to identify designated routes that are open to motor vehicles, but narrower than a road. These terms included "routes," "ways," and "two-track trails" (as opposed to single-track trails). Some respondents suggested that the final rule adopt definitions for categories of trails from the FSM and FSH.

*Response.* The Department has retained the proposed definitions of road and trail in the final rule.

Section 212.51 of the rule explicitly authorizes responsible officials to designate NFS trails for motor vehicle use. No clarification on this point is needed. The agency has long managed some trails as nonmotorized and others as open to a variety of motor vehicles.

The definitions for part 212 distinguish roads from trails based on width and management. The Department believes that this distinction is clear and objective and makes sense in terms of the way the agency manages roads and trails. There is no need to change the definition of a trail because the rule already provides the responsible official discretion to designate roads and trails for appropriate classes of motor vehicles, depending on the circumstances. Some roads may be designated for use by non-highway-legal vehicles. Some routes over 50 inches wide are identified and managed as trails and can accommodate wider vehicles.

The definitions for trails in the rule are keyed to management of the forest transportation system, designation of routes and areas for motor vehicle use, and management of use by over-snow vehicles. The definitions for trails in the FSM and FSH are appropriate for trail management in the field and are not needed for the broader purposes of part 212. Definitions based on the types of use on trails, such as single versus double track or motorized versus nonmotorized, are not necessary in the rule, since designations based on vehicle class will be made through implementation of the rule at the local level.

Definition for "travel management atlas."

*Comment.* Some respondents suggested expanding the definition for travel management atlas to encompass nonmotorized routes in order to serve a wider number of public and administrative needs.

*Response.* Under the final rule, the travel management atlas consists of the forest transportation atlas and the motor vehicle use map or maps. The forest transportation atlas includes the entire system of roads, trails, and airfields of an administrative unit. Therefore, the travel management atlas encompasses all NFS roads and NFS trails, regardless of whether they are designated for motor vehicle use. However, only NFS roads and NFS trails designated for motor vehicle use will appear on the motor vehicle use map. Since motor vehicle use maps may be developed at the Ranger District level, the final rule recognizes that the travel management atlas for a National Forest may include one or more motor vehicle use maps.

Definition for "unauthorized or unclassified road or trail."

*Comment.* Some respondents suggested that these roads and trails be called "unauthorized motorized routes" to ensure they are not given official status as roads or trails without site-specific analysis. Respondents also recommended that the reference in the definition to a forest transportation atlas be removed or explained to eliminate the implication that a route can be authorized simply by including it in the atlas. Other respondents stated that the definition should include penalties for creation and use of unauthorized or unclassified routes.

*Response.* The Department believes that the term "unauthorized or unclassified road or trail" is cumbersome and that "unauthorized" more accurately captures the nature of these routes than "unclassified." Accordingly, in the final rule, the Department is changing "unauthorized or unclassified road or trail" to "unauthorized road or trail."

The definition for unauthorized road or trail (a road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas) makes clear that unauthorized roads and trails are not part of the forest transportation system and are not officially recognized by the Forest Service.

Stating that an unauthorized road or trail is not included in a forest transportation atlas does not imply that it can be authorized simply by including it in the atlas. As stated in the preamble to the proposed rule, user-created roads and trails may be identified through public involvement and considered in the designation process. After public consideration and appropriate site-specific environmental analysis, some user-created routes may be designated for motor vehicle use pursuant to § 212.51 of the final rule. These routes

would become NFS roads or NFS trails and would be included in a forest transportation atlas and reflected on a motor vehicle use map.

The final rule contains a prohibition at 36 CFR 261.13 pertaining to motor vehicle use. Under this provision, after NFS roads, NFS trails, and areas on NFS lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District, it is prohibited to possess or operate a motor vehicle on NFS lands in that unit or District other than in accordance with those designations. At that point, motor vehicle use off designated routes and outside designated areas will be prohibited under § 261.13.

Section 212.2(a). This section of the rule governs the travel management atlas.

*Comment.* Some respondents suggested that the travel management atlas be available at Ranger Districts and on the internet.

*Response.* The current rule provides that the forest transportation atlas is to be available to the public at the headquarters of each administrative unit of the Forest Service. Likewise, the final rule provides that the travel management atlas, consisting of the forest transportation atlas and the motor vehicle use map or maps, is to be available to the public at the headquarters of each administrative unit of the Forest Service. The Department believes it is unnecessary to require each Ranger District to maintain a complete travel management atlas (which encompasses all forest roads and trails for the entire National Forest). The motor vehicle use map will be available at the corresponding Ranger District. The Forest Service also intends to post motor vehicle use maps on the internet and gradually to post travel management atlases (a more complicated job) on the internet. The Department is adding language in § 212.56 to require that motor vehicle use maps be made available on appropriate Web sites as soon as practicable.

Section 212.2(b). This section of the rule governs the forest transportation atlas.

*Comment.* Some respondents commented that updating the forest transportation atlas to reflect new information should be mandatory, rather than discretionary. Respondents also stated that all long-standing roads should be shown on a forest transportation atlas. Other respondents stated that temporary roads should be shown on a forest transportation atlas while they exist.

Some respondents stated that the final rule should require National Forests to create a forest transportation atlas, so that they cannot close all routes by failing to create the atlas.

*Response.* Section 212.2(b) of the final rule allows a forest transportation atlas to be updated, rather than requiring it to be updated. Under the final rule, forest roads and trails are included in a forest transportation atlas. Temporary roads and trails are not forest roads and trails and therefore are not included in a forest transportation atlas and are not designated for motor vehicle use. It would be cumbersome to add temporary roads and trails to the atlas and remove them once they are no longer authorized.

The current rule at § 212.2(a) requires the responsible official for every administrative unit of the Forest Service to develop and maintain a forest transportation atlas. Likewise, § 212.2(a) of the final rule requires the responsible official for every administrative unit of the Forest Service to develop and maintain a travel management atlas, which consists of a forest transportation atlas and a motor vehicle use map or maps.

The Department has removed the citation to § 200.1 after the reference to the Forest Service's directive system in § 212.2(b) of the final rule.

Section 212.5(a)(1). This section of the rule governs traffic rules in general.

*Comment.* Some respondents stated that the final rule should not allow preemption of State traffic laws and that the Forest Service should not allow uses that are illegal on public, State, or county roads. One respondent maintained that the proposed rule would revoke water rights for miners. Other respondents asked the Forest Service to retain the authority to preempt State law.

*Response.* Under the current rule, traffic on roads is subject to State traffic laws where applicable, except when in conflict with the Forest Service's prohibitions at 36 CFR part 261. If there is a conflict, the agency's prohibitions preempt State traffic laws. To ensure that the agency's intent with respect to designation of roads, trails, and areas is fully effectuated, the proposed and final rules also provide for preemption of State traffic laws when they conflict with those designations. No other preemption of State laws is authorized. The final rule does not revoke water rights for miners.

Section 212.5(a)(2)(ii). This section of the rule contains specific traffic rules.

*Comment.* Some respondents suggested that the final rule include and distinguish among varieties of OHVs,

including ATVs, motorcycles, and buggies, and recognize different needs of users of different vehicles. Respondents also suggested providing national definitions of vehicle classes. Respondents recommended recognizing ATVs as a specific class of OHV.

*Response.* This section of the rule in part 212, subpart A, which authorizes restricting use of roads by certain classes of vehicles or types of traffic as provided in 36 CFR part 261, is separate from the provisions for designation of roads, trails, and areas for motor vehicle use in part 212, subpart B. Part 212, subpart B, provides for designation of roads, trails, and areas for motor vehicle use by vehicle class. Since new classes of vehicles are introduced on a regular basis and designations will be made at the local level, the rule does not need to define different types of OHVs at a national level.

The vehicle classes enumerated in § 212.5(a)(2)(ii) are illustrative, rather than exhaustive. The Department agrees that ATVs are a common type of OHV and has added "all-terrain vehicles" to the list of vehicle classes in § 212.5(a)(2)(ii). The Department has removed "automobiles" from the list, since "passenger cars" are already included.

Section 212.7. This section of the rule governs access procurement by the United States.

There were no comments received on this section of the proposed rule. However, the Department is changing the heading and text of § 212.7(a) to conform to terminology used elsewhere in part 212 and in the definitions for "forest road," "National Forest System road," and "National Forest System trail" in the final rule.

Section 212.10. This section of the rule governs maximum economy NFS roads.

No comments were received on this section of the proposed rule. The Department has not made any changes to this section.

#### Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

Section 212.50. This section governs the purpose and scope of part 212, subpart B.

*Comment.* Some respondents stated that the final rule should specify whether current land management plans, closures, and open areas remain in effect while designation decisions are pending.

Respondents suggested that the purpose and scope section summarize available information on monitoring and other aspects of management of motor vehicle use in National Forests.

Some respondents requested clarification that State law governs motor vehicle use on legally documented rights-of-way held by States, counties, or local public road authorities.

*Response.* The prohibition pertaining to motor vehicle use in the final rule at § 261.13 explicitly states that it is not triggered until NFS roads, NFS trails, and areas on NFS lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District and those designations are identified on a motor vehicle use map. Until those designations are complete for the entire administrative unit or Ranger District and identified on a motor vehicle use map, existing authorities and orders regarding motor vehicle use remain in effect.

The purpose and scope section of subpart B provides for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use and a prohibition to enforce those designations. Available information on monitoring and other aspects of management of motor vehicle use in National Forests is more appropriately addressed in the preamble to the proposed and final rules.

Designations and prohibitions under this rule do not apply to legally documented rights-of-way held by States, counties, or other local public road authorities. Only NFS roads and NFS trails may be designated for motor vehicle use under the final rule. The definitions of "National Forest System road" and "National Forest System trail" exclude legally documented rights-of-way held by States, counties, or other local public road authorities. In addition, the prohibition pertaining to motor vehicle use specifically exempts use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

As previously described, the final rule includes a new paragraph (b) in § 212.50 to clarify that previous travel management decisions may be incorporated in designations.

Section 212.51. This section of the rule governs designation of roads, trails, and areas for motor vehicle use.

*Comment.* Some respondents commented that the final rule should require a designation decision to be consistent with the applicable land management plan. Other respondents stated that the final rule should provide for reconsideration of decisions made in land management plans.

*Response.* Under the National Forest Management Act, project-level decisions, including designation of



routes for motor vehicle use, must be consistent with the applicable land management plan. If a proposed designation is not consistent with the land management plan, the responsible official must either change the proposed designation or propose an amendment to the plan.

Since under some land management plans, large areas of NFS lands are open to cross-country motor vehicle travel, the Department expects that some land management plan amendments will be proposed and considered during implementation of the final rule. However, the Department does not believe that the final rule should provide for reconsideration of all travel management decisions made in land management plans. Reconsideration of all these decisions would waste public resources, disrespect public participation in development of the plans, and expand the scope of this travel management rule beyond its purposes.

*Comment.* Some respondents stated that the final rule should encourage designation decisions to be made case by case at the Ranger District level. Other respondents stated that the final rule should not allow designation at the Ranger District level to avoid inconsistency, to promote enforceability, and to ensure that cumulative effects are evaluated. These respondents believed that designation decisions should be made only at the National Forest or Regional level.

*Response.* The Department believes it is appropriate to give Forest Service field officers the flexibility to designate routes and areas for an entire administrative unit or for a single Ranger District. Designation at the Ranger District level may make sense, given the size of some Ranger Districts, which, at over three million acres, are more than ten times the size of the smallest administrative units. The Department believes that local evaluation and consideration of routes, with public involvement and coordination with Federal, State, local, and tribal governments, will lead to better decisions and better compliance with them.

Enforcement at these two scales is feasible because the regulation specifically authorizes designation at these two levels and triggers the prohibition pertaining to motor vehicle use once a designation decision has been made at either of these levels. Administrative units and Ranger Districts are discrete management and geographic units within the NFS. The Department believes that Ranger Districts are large enough to permit

adequate effects analysis for designation decisions and that field officers should be given the flexibility to determine the appropriate scope for that analysis. The Department believes that it would be unwieldy to make designation decisions and comply with the associated legal requirements at a Regional scale.

Section 212.52. This section governs public involvement.

The Department has changed the title of this section from "Public involvement in the designation process" to "Public involvement," since this section addresses public involvement in the designation process (§ 212.52(a)) and the absence of public involvement in the case of temporary, emergency closures (§ 212.52(b)).

Section 212.52(a). This section of the rule governs public involvement in the designation process.

*Comment.* Some respondents suggested that the final rule require consultation with user groups. Other respondents requested that the final rule include detailed requirements for public involvement in route and area designation, including publication of a **Federal Register** notice, legal notices, 60-to-90-day public comment periods, mailings, postings on bulletin boards, and postings on internet sites. Some respondents requested that the final rule provide for public notice and comment on inventories of routes and areas, as well as on designation decisions.

*Response.* Consistent with E.O. 11644, E.O. 11989, and § 212.52 of the proposed rule, the final rule requires public participation generally rather than consultation with specific parties in the designation of roads, trails, and areas pursuant to the rule. Also consistent with the E.O.s and § 212.52 of the proposed rule, the final rule does not enumerate specific requirements for public involvement, so as to give field officers flexibility in meeting the requirement to give advance notice to allow for public comment on proposed designations and revisions to designations.

The Department believes that public involvement associated with the NEPA process will often fulfill the requirements of § 212.52(a). Rather than duplicating existing requirements for public involvement, the Department is adding language to § 212.52(a) of the final rule to establish that advance notice and public comment will be consistent with agency procedures under NEPA.

The Department does not believe it is necessary to provide for public notice and comment on inventories of routes and areas. NFS roads and NFS trails are reflected in the forest transportation

atlases. User-created routes on NFS lands that have resulted from cross-country motor vehicle use may be identified through public involvement and considered in the designation process under the final rule. These routes will not necessarily be inventoried. The decision about which routes and areas to designate, rather than the gathering of information prior to designation, is the decision point with substantive effects on users and the environment. Designation decisions will be subject to public notice and comment as provided in § 212.52(a).

Section 212.52(b)(1). This section of the rule addresses temporary, emergency closures without advance public notice.

*Comment.* Some respondents suggested that the final rule allow cooperative work, volunteer work, or mitigation to address environmental problems associated with motor vehicle use of routes as an alternative to temporary, emergency closures.

*Response.* Section 212.52(b)(1) of the proposed and final rules restates existing authority in § 295.3 to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B. This authority augments other measures that might be taken to address resource protection or to protect public health and safety, including cooperative work, volunteer work, and mitigation.

Section 212.52(b)(2). This section of the rule governs temporary, emergency closures based on a determination of considerable adverse effects.

*Comment.* Some respondents stated that the final rule should restore "including public input," from 36 CFR 295.5, after "If, based on monitoring pursuant to § 212.57," and before "the responsible official determines that motor vehicle use on a National Forest System road or a National Forest System trail or in an area on National Forest System lands is causing or will cause considerable adverse effects."

*Response.* There is no legal obligation to obtain public input in connection with monitoring the effects of motor vehicle use, or in making a determination of considerable adverse effects for purposes of § 212.52(b)(2). The public is welcome to provide information to the responsible official regarding motor vehicle use on routes and in areas and to highlight potential problems associated with motor vehicle use on particular routes and in particular areas. The Forest Service values this input as an important adjunct to agency monitoring efforts. However, the Department believes it is not appropriate, and could be counter-



productive, to imply that public input is required in connection with a determination of considerable adverse effects pursuant to § 212.52(b)(2).

To track the language of E.O. 11644 more precisely and to clarify that monitoring pursuant to § 212.57 is not the only potential source of information about "considerable adverse effects," the Department is removing "based on monitoring pursuant to § 212.57" from the final rule. This section now begins "If the responsible official determines that motor vehicle use \* \* \*

*Comment.* Some respondents requested that the word "mitigated" be removed from § 212.52(b) in the final rule, or that the final rule include a standard for mitigation, such as "to a level of insignificance." These respondents contended that the addition of "mitigated" in § 212.52(b) weakens the strong wording of E.O. 11644 and E.O. 11989 which, according to these respondents, require such effects to be eliminated. These respondents maintained that the explanation for the addition of "mitigated" in the preamble to the proposed rule is contradictory.

*Response.* The Department believes that temporary, emergency closures based on a determination of considerable adverse effects should remain in place until the effects have been mitigated or eliminated. Use of only the term "eliminated" could be read to imply that the closure must stay in place until there is no effect whatsoever, a practical impossibility in some situations. By "mitigated," the Department means the effects will be reduced to the point where they are not considerable adverse effects. The Department believes that the inclusion of both terms, "mitigated or eliminated," better expresses the intent of the E.O.s. Where motor vehicle use directly causes or will directly cause considerable adverse effects, use must be stopped until the considerable adverse effects have been mitigated or eliminated. The final rule further requires that the closure remain in place until measures have been implemented to prevent future recurrence.

*Comment.* Some respondents stated that the final rule should limit temporary, emergency closures to one year as in § 295.3 of the current rule and should require documentation of impacts and consideration of alternatives before closure. Respondents suggested changing "considerable adverse effects," which they believed is vague and open to interpretation, to "irreversible physical harm."

*Response.* The Department believes it is appropriate to retain the flexibility to implement a temporary, emergency

closure for a period that is longer than a year, if warranted by the situation. E.O. 11644, as amended by E.O. 11989, requires that the closure remain in place until the considerable adverse effects have been eliminated (mitigated or eliminated in the final rule). Setting a mandatory expiration date could conflict with this requirement.

Requiring formal documentation of impacts and consideration of alternatives also could frustrate the purpose of the E.O.s and this final rule, which require the responsible official to close a road, trail, or area immediately when motor vehicle use on that route or in that area is causing considerable adverse effects. However, the Department is adding "directly" before "causing" and "cause" in § 212.52(b)(2) of the final rule to clarify that the motor vehicle use must directly cause a considerable adverse effect to be subject to this section. The Department is also including a requirement for public notice of the closure pursuant to 36 CFR 261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

The Department does not believe that it would be appropriate to substitute "irreversible physical harm" for "considerable adverse effects" as the trigger for a temporary, emergency closure under the final rule. The E.O.s provide that a determination of considerable adverse effects will trigger a temporary, emergency closure. In addition, the E.O.s and this final rule provide for the closure to be lifted when the considerable adverse effects have been redressed. If irreversible harm, which is permanent, is the trigger, the closure could never be lifted.

For consistency with § 212.51, the Department is removing "Forest Supervisor or other" before "responsible official" in § 212.52(b)(2) of the final rule. The Department is making the same change in §§ 212.53 and 212.57 of the final rule. In addition, the Department is changing the phrase "cultural or historic resources" in § 212.52(b)(2) to "cultural resources" because the phrase "cultural resources" includes historic resources for purposes of the National Historic Preservation Act.

Section 212.53. This section of the rule governs coordination with Federal, State, county, and other local governmental entities and tribal governments.

*Comment.* Some respondents stated that the final rule should require consultation with gateway communities and State tourism offices.

*Response.* Section 212.53 of the final rule requires coordination with appropriate Federal, State, county, and other local governmental entities and tribal governments in implementing the final rule. State governments are organized differently across the country. While the Department relies on States to identify the appropriate points of contact, State tourism offices generally would fall into this category. "Gateway communities" is a broad term encompassing county and local governments in the vicinity of a National Forest. The Department believes that coordination with State, local, and tribal governments is critical to the success of this final rule. Not only can their programs be affected by designation of NFS roads, NFS trails, and areas on NFS lands under the final rule, but they often maintain their own networks of roads intertwined with the Forest Service's system of roads and trails.

Section 212.54. This section of the rule governs revision of designations.

*Comment.* Some respondents stated that the final rule should make designations permanent, rather than subject to future review and reconsideration. Other respondents suggested that the rule provide for development of new trails, and avoid the implication that the system designated pursuant to this final rule represents all the routes that will ever be approved for motor vehicle use. Some respondents stated that the final rule should allow users to continue to develop new trails independent of the Forest Service.

*Response.* The Department believes that field officers need to be able to revise designations made pursuant to the final rule to meet changing conditions. This flexibility is consistent with E.O. 11644, which provides for closure of designated routes based on environmental impacts. Section 212.54 of the final rule will allow for revisions to designations to reflect changes in environmental conditions, recreation demand, and other factors identified through monitoring pursuant to § 212.57 of the final rule. These revisions may include additions to the system of designated routes, as well as route closures. New motor vehicle routes can be planned, constructed, and designated after appropriate public involvement and environmental analysis. The Department does not agree that users should construct new routes without agency approval. Trail construction without a written authorization from the Forest Service is prohibited by § 261.10(a).

The Department has added language to § 212.54 of the final rule to clarify that revision of designations shall include coordination with Federal, State, county, and other local governmental entities and tribal governments as provided under § 212.53.

Section 212.55. This section of the rule governs the criteria for designation of roads, trails, and areas for motor vehicle use.

*Comment.* Some respondents suggested consolidating § 212.55(a), (b), and (c) to reduce redundancy and to provide the same standards for motor vehicle use on roads and trails.

*Response.* The general criteria of § 212.55(a) and the specific criteria of § 212.55(b) are taken directly from E.O. 11644. The E.O. applies only to trails and areas designated for motor vehicle use. However, the Department believes that the general criteria cited in the E.O. are of such universal applicability that they should be considered in designating roads, as well as trails and areas. Therefore, § 212.55(a) describes criteria to be considered in all designations.

Section 212.55(b), on the other hand, reflects the specific criteria to be used in designating trails and areas under the E.O. Section 212.55(c) contains specific criteria for designation of roads drawn from existing Forest Service transportation policy. The Department believes that consolidating these sections into a single set of criteria for roads, trails, and areas would not provide the opportunity to address the different management challenges and opportunities in different contexts.

Section 212.55(a). This section of the rule contains general criteria for designation of NFS roads, NFS trails, and areas on NFS lands.

*Comment.* Some respondents suggested removing “minimization of conflicts among uses of NFS lands” and other criteria unrelated to physical and biological impacts. These respondents stated that the government should not eliminate one use to avoid conflict with another and asked that the final rule specify that motorized and nonmotorized use on the same route does not represent a conflict.

*Response.* The references to use conflicts in this section are taken from E.O. 11644. In issuing this E.O., President Nixon directed agencies to take conflicts among uses into account in designating trails and areas for motor vehicle use. The Department believes that some trails can accommodate both motorized and nonmotorized uses. However, the Department also believes that some trails are better managed for

one use or the other, and that providing separate trail systems can sometimes result in better recreational experiences for all users.

The Department is changing the phrase “National Forest System resources” in § 212.55(a) to “National Forest System natural and cultural resources” to make it clear that this criterion includes cultural, as well as natural, resources on NFS lands. To emphasize consideration of effects through a public process, the Department is replacing “protection of” prior to “National Forest System resources” with “effects on” and removing “promotion of” before “public safety” and “minimization of” before “conflicts among uses.”

*Comment.* Some respondents stated that the final rule should ensure that no routes are designated unless there is funding for maintenance and enforcement. Other respondents asked field officials to consider the availability of volunteers and cooperators in evaluating resources available for maintenance.

*Response.* The Department agrees that availability of resources should be a consideration in designating routes for motor vehicle use. Section 212.55(a) of the proposed and final rules include as a criterion for designation “the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.” The Department believes, however, that this determination involves the exercise of judgment and discretion on the part of the responsible official. At times, resources are scarce, and the Department does not believe that this scarcity should lead to blanket closures of NFS lands to recreational users. Volunteers and cooperators can supplement agency resources for maintenance and administration, and their contributions should be considered in this evaluation.

Section 212.55(b). This section of the rule contains specific criteria for designation of trails and areas.

*Comment.* Some respondents suggested rewriting the criteria in this section to make clear that some level of impacts is acceptable. Other respondents stated that the final rule should retain what they characterized as the mandatory language from E.O. 11644 with respect to application of the specific criteria for trails and areas (“Designation of these areas and trails shall be in accordance with the following: areas and trails shall be located to minimize. \* \* \*”), rather than

what they viewed as the discretionary language in the proposed rule (“In designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing. \* \* \*”).

*Response.* The Department has retained the proposed language, “the responsible official shall consider effects on the following, with the objective of minimizing,” in the final rule. The retained language is mandatory with respect to addressing environmental and other impacts associated with motor vehicle use of trails and areas. The Department believes this language is consistent with E.O. 11644 and better expresses its intent. It is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address environmental and other impacts, but that motor vehicle use on Federal lands continue in appropriate locations. An extreme interpretation of “minimize” would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple use of NFS lands. Neither E.O. 11644, nor these other laws and policies, establish the primacy of any particular use of trails and areas over any other. The Department believes “shall consider \* \* \* with the objective of minimizing \* \* \*” will assure that environmental impacts are properly taken into account, without categorically precluding motor vehicle use.

Section 212.55(c). This section of the rule contains specific criteria for designation of roads.

*Comment.* Some respondents stated that the final rule should clarify the application of the criteria in § 212.55(c) to user-created and temporary roads. Other respondents suggested that the final rule make road management objectives dependent on designation rather than designation dependent on road management objectives.

*Response.* Only NFS roads, NFS trails, and areas on NFS lands will be designated for motor vehicle use under the final rule. Temporary roads are not NFS roads and may not be designated. Temporary roads are used for emergency purposes or under a written authorization for a particular time frame and then decommissioned. Motor vehicle use on a temporary road is exempted from designations under § 212.51(a)(5) and (a)(8). User-created roads may be considered for designation under the criteria in § 212.55 of the final rule. Those that are not designated will

be closed to motor vehicle use by operation of the final rule.

The Department does not expect road and trail management objectives to remain static over time. Road and trail management objectives document prior decisions regarding the role of roads and trails in providing access to implement land management plans. This information about the intent and purpose of roads and trails should be considered when making designation decisions under the final rule. However, road and trail management objectives must be revised when designations under the final rule change motor vehicle use on roads and trails. Consequently, the Department has deleted "consistency with road management objectives" from § 212.55(c) of the final rule. Likewise, the Department has deleted "consistency with trail management objectives" from § 212.55(b) of the final rule. In addition, the Department has added compatibility of vehicle class with road geometry and road surfacing as a specific criterion for designation of roads because this criterion is an important factor in assessing public safety in designating roads for motor vehicle use.

Section 212.55(d). This section of the rule addresses rights of access in the context of the designation process.

*Comment.* Some respondents stated that the final rule should provide clear protection of tribal treaty rights. Other respondents stated that the final rule must not revoke valid existing rights-of-way held by miners.

Some respondents stated that the final rule must not interfere with rights of access to private property and should recognize private use by right for inholders, rather than requiring private use by inholders to be authorized by a permit.

One respondent requested that the proposed rule be revised to reflect other provisions of the Alaska National Interest Lands Conservation Act (ANILCA) besides sections 811 and 1110(a).

*Response.* Nothing in the final rule revokes any rights-of-way held by miners or others or alters or is inconsistent with any treaty rights held by tribal governments. In the final rule, the Department clarifies this intent by substituting "recognize" for "take into account" with regard to rights of access. Responsible officials will consult with affected tribal governments when designating NFS roads, NFS trails, and areas on NFS lands, pursuant to FSM 1563.11.

Section 212.55(d) of the final rule requires responsible officials in

designating roads, trails, and areas to recognize valid existing rights, including valid outstanding or reserved rights-of-way for a road or trail. Examples include a valid outstanding or reserved right-of-way for a road or trail in existence at the time title to the underlying land was acquired by the United States, and a right-of-way for a road or trail acquired by the United States where the owner of the underlying land may have retained control of the right-of-way and may have reserved the right to allow others to use it. The Forest Service may not regulate uses within the scope of these rights-of-way if the agency has not acquired the right to do so. However, the agency may regulate use on these rights-of-way if the agency has obtained the right to do so.

Section 1323(a) of ANILCA provides property owners within the boundaries of the NFS certain rights of access across NFS lands. According to the terms of ANILCA, such access shall be "subject to such terms and conditions as the Secretary of Agriculture may prescribe," and "as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System" (16 U.S.C. 3210(a)). While ANILCA provides certain rights to property owners, those rights are subject to such reasonable terms and conditions as the Forest Service may prescribe in a written authorization.

Some property owners also may possess reserved or outstanding rights-of-way or other rights providing access across NFS lands, which may or may not require a written authorization from the Forest Service. Those rights must be recognized under § 212.55(d). The Department believes that questions of valid existing rights are best examined at the local level, where they can be individually evaluated.

The Department is moving the requirement in § 212.55(d)(2) of the proposed rule to take into account the provisions concerning rights of access in sections 811 and 1110(a) of ANILCA to § 212.81(c) of the final rule, governing establishment of restrictions and prohibitions on use by over-snow vehicles, because these sections of ANILCA specifically refer to snowmobile use. In addition, the Department is changing "take into account" to "recognize" in § 212.81(c) of the final rule. In the final rule, the Department is citing section 811(b), rather than section 811, because section 811(b) contains the reference to snowmobile use. To the extent other

provisions of ANILCA may address rights for motor vehicle access, they are covered by § 212.55(d)(1), which requires that the responsible official recognize valid existing rights in making designations under the final rule. It is not feasible for the Department to list every right that may be implicated in any given situation in designating roads, trails, and areas for motor vehicle use under the final rule.

Section 212.55(e). This section of the rule addresses wilderness areas and primitive areas in the context of the designation process.

*Comment.* Some respondents commented that the final rule should retain the more comprehensive ban on motor vehicle use in wilderness areas contained in the current rule, and drop the exception for motor vehicle use authorized in enabling legislation for wilderness areas.

*Response.* Mechanical transport and motor vehicles are prohibited in wilderness areas unless they are necessary to meet minimum requirements for administration of the areas or they are expressly authorized under individual statutes designating wilderness areas. The language in § 212.55(e) proscribing designation of roads, trails, and areas for motor vehicle use in wilderness areas, unless motor vehicle use is authorized by the applicable enabling legislation for those areas, is required for consistency with those statutes.

To avoid confusion with designated roads, trails, and areas, the Department has removed "Congressionally designated" before the phrase "wilderness areas" in § 212.55(e) of the final rule.

*Comment.* Some respondents requested specific direction on protection of wilderness study areas and inventoried roadless areas to preserve their roadless, nonmotorized character. Respondents also suggested prohibiting motor vehicle use within a buffer zone surrounding wilderness areas.

*Response.* Management of wilderness study areas established by Congress is generally governed by their authorizing legislation. Management of inventoried roadless areas is governed by the applicable land management plan and Forest Service policy. The Department does not believe that additional direction for management of these areas is necessary or required in this final rule. Nor does the Department believe that it would be appropriate to prohibit motor vehicle use within a buffer zone surrounding wilderness areas. Responsible officials will consider impacts to nearby wilderness areas, wilderness study areas, and inventoried

roadless areas during the designation process.

Section 212.56. This section of the rule governs identification of designated roads, trails, and areas.

The Department is making a technical change in the final rule to clarify that motor vehicle use maps will be available at Ranger District headquarters and as soon as practicable on appropriate Web sites, as well as at administrative unit headquarters.

Section 212.57. This section of the rule governs monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

*Comment.* Some respondents recommended reinstating the requirement for annual review of OHV management from § 295.6 of the current rule and including public participation in these reviews to allow for adaptive management. Other respondents suggested requiring regular updates of motor vehicle use maps and signs marking designated roads, trails, and areas.

*Response.* The Department supports the concept of adaptive management and agrees that monitoring and, if needed, revision of motor vehicle designations will be an ongoing part of travel management. Since the system of designated routes and areas will change over time, the Department anticipates that local units will publish new motor vehicle use maps annually and update signs as necessary or appropriate.

The Department does not believe that a regulatory requirement for annual review of OHV management, having no basis in law or the E.O., should be imposed. Local review of designations should be conducted as needed, and the Department favors providing local officials with discretion in determining how often they are conducted.

The Department is adding “consistent with the applicable land management plan, as appropriate and feasible” to § 212.57 of the final rule to clarify that monitoring should be incorporated into land management plans under 36 CFR 219.11 to the extent possible to avoid redundant monitoring requirements.

#### Subpart C—Snowmobile Use

Comments on snowmobile use are addressed in the response to comments on § 261.13 of the proposed rule and the corresponding discussion in the preamble to the proposed rule. No specific comments were received on this subpart.

Section 212.81. This section covers over-snow vehicle use.

The Department has added “If the responsible official proposes restrictions or prohibitions on use by over-snow

vehicles under this subpart” to the beginning of § 212.81(c) in the final rule to stress that the requirements governing the designation process apply to over-snow vehicles only if the responsible official proposes to establish restrictions or prohibitions on over-snow vehicle use.

#### Part 251—Land Uses

The Department is making a technical change to conform the definitions for “National Forest System road” and “National Forest System trail” in part 251 with corresponding definitions in part 212 of this final rule.

#### Part 261—Prohibitions

Section 261.2. This section contains the definitions for part 261.

In addition to the revised definition for “motor vehicle,” § 261.2 of the final rule contains new definitions for “administrative unit” and “area” and revised definitions for “National Forest System road” and “National Forest System trail” to match the definitions added to § 212.1. Comments associated with these definitions are addressed under § 212.1. No specific comments were received on this section of the proposed rule.

Section 261.13. This section of the rule prohibits use of motor vehicles not in accordance with designations and provides for exemptions.

*Comment.* Some respondents suggested that bicycles should be included in the prohibition on use of motor vehicles off designated roads and trails and outside designated areas.

*Response.* The Department disagrees that bicycles should be regulated under the same provisions as motor vehicle use. The Department believes that bicycles are distinct from motor vehicles and should be managed separately from them and that a nation-wide prohibition on cross-country bicycle use is unwarranted at this time. Noise (and its impacts on wildlife and other users) is a critical distinction between bicycles and motor vehicles. Other differences can (depending on the vehicle) include speed, power, weight, and tread width.

Like all uses, including hiking, horseback riding, and motor vehicle use, bicycling has environmental impacts and can affect the experience of other users. Local Forest Service officials retain authority to regulate bicycle use according to their local situation and needs. Some National Forests, through travel plans and orders, restrict bicycles to particular roads and trails. Others allow cross-country bicycling.

*Comment.* Some respondents suggested that the rule specify penalties

for violations of § 261.13 and that fines for violations be substantially increased.

*Response.* Penalties for violations of § 261.13 are beyond the scope of this rulemaking and are established by Federal statute. Violations of prohibitions in part 261 are Class B misdemeanors, which are punishable by a prison term of up to six months (18 U.S.C. 3559(a)(7); 36 CFR 261.1b). Pursuant to 18 U.S.C. 3571(e), the \$500 maximum fine specified in § 261.1b is superseded by the \$5000 maximum fine established for Class B misdemeanors in 18 U.S.C. 3571(b)(6). However, the maximum penalties are rarely imposed for violations of the Forest Service’s criminal regulations.

Each Federal judicial district implements a schedule of collateral forfeiture amounts for violation of each Federal agency’s criminal regulations. The applicable collateral forfeiture amount is normally entered on a citation issued to violators of Forest Service criminal regulations. The applicable collateral forfeiture amount may be paid by the violator to end the case without appearing in court. Except for serious offenses or those for which a court appearance is mandatory, these collateral forfeiture amounts generally are less than \$1,000, and most are less than \$100.

Restitution also may be required for criminal violations involving environmental damage (18 U.S.C. 3663A).

*Comment.* Some respondents observed that the rule’s prohibition does not require signage to take effect and that users are responsible for using motor vehicles in accordance with designations reflected on a motor vehicle use map. These respondents asked the Forest Service to amend the rule to require signage of roads, trails, and areas closed to motor vehicle use.

*Response.* The Department disagrees with this suggestion. The Forest Service will continue to use signs widely to provide information and inform users on a variety of topics, including regulations and prohibitions. However, the agency has found that posting routes as open or closed to particular uses has not always been effective in controlling use. One of the reasons is that new unauthorized routes continue to proliferate, even in areas closed to cross-country motor vehicle use. Requiring each undesignated route and area to be posted as closed would be an unreasonable and unnecessary burden on agency resources and would tend to defeat the purpose of the final rule. Signs have also proven difficult to maintain and subject to vandalism. The final rule places more responsibility on

users to get motor vehicle use maps from Forest Service offices or websites and to remain on routes and in areas designated for motor vehicle use.

The Department has added language to the final rule clarifying that the prohibition on motor vehicle use other than in accordance with designations does not go into effect until designations have been identified on a motor vehicle use map.

*Comment.* Some respondents suggested replacing the prohibition in § 261.13 with a provision restricting motor vehicle use in certain areas to people with specific training and endorsement from organizations promoting environmental ethics, such as Tread Lightly! or the National Off-Highway Vehicle Conservation Council.

*Response.* The Department appreciates the long-standing work of nongovernmental organizations, including user groups, to promote environmental ethics and responsible behavior on the part of motor vehicle users. These groups make vital contributions to sustainable motor vehicle recreation. Nevertheless, the Department declines to adopt this suggestion, which would make these nongovernmental organizations gatekeepers for Federal lands and resources. Moreover, the prohibition in § 261.13 is needed because in many situations cross-country motor vehicle use, and in some situations motor vehicle use on routes, can cause unacceptable impacts, regardless of driver training and endorsement of the driver by organizations promoting environmental ethics.

*Comment.* Some respondents asked that motorcycles be exempted from the prohibition regarding motor vehicle use in § 261.13.

*Response.* The Department disagrees with this suggestion. Motorcycles are motor vehicles under E.O. 11644 and § 212.1 of this final rule. Noise and other impacts of motorcycles can be similar to those of other motor vehicles. The final rule seeks to establish a common regulatory framework for management of all motor vehicles to increase consistency and reduce confusion and lack of compliance. At the same time, the Department recognizes that user demands and environmental impacts vary by class of vehicle. Many motorcyclists prefer to ride on single-track trails too narrow for ATVs and larger vehicles. Similarly, some ATV riders prefer to ride on trails not used by larger sport utility vehicles. Local Forest Service managers, with input from the public, will take these differences into account when designating roads, trails, and areas for

motor vehicle use. The Department anticipates that many National Forests will designate some single-track trails for motorcycles, but not for other motor vehicles.

*Comment.* Some respondents asked the Forest Service to remove the exemption for snowmobiles from the prohibition regarding motor vehicle use in § 261.13 and consolidate §§ 261.13 and 261.14. Others suggested making the exemption seasonal or limiting it to specific dates or snow conditions.

*Response.* Use by over-snow vehicles, including snowmobiles, presents a distinct suite of issues. A snowmobile traveling over snow results in different impacts to natural resource values than motor vehicles traveling over the ground. Unlike other motor vehicles traveling cross-country, over-snow vehicles traveling cross-country generally do not create a permanent trail or have a direct impact on soil and ground vegetation. Therefore, the Department believes that use by over-snow vehicles should be addressed in separate regulatory provisions and that mandatory designation of use by over-snow vehicles is not appropriate.

Nevertheless, since there are impacts associated with use by over-snow vehicles, and since they are included in the definition of off-road vehicle in E.O. 11644 and E.O. 11989, the Department is preserving the authority currently in part 295 to allow, restrict, or prohibit use by over-snow vehicles, including snowmobiles, on a discretionary basis in part 212, subpart C. Local Forest Service officials retain authority to manage use by over-snow vehicles to address local situations and concerns and may establish restrictions based on the season of use or local snow conditions that might not make sense nationally. In addition, the final rule establishes a prohibition regarding use by over-snow vehicles in § 261.14 that is very similar to the prohibition regarding motor vehicle use in § 261.13.

The final rule clarifies that over-snow vehicles qualify as such only while in use over snow.

*Comment.* Some respondents asked the Forest Service to continue to allow motor vehicle use, where appropriate, for activities authorized under a written authorization, such as livestock operations, mining, logging, firewood collection, and maintenance of pipelines and utility corridors.

*Response.* The Department agrees that motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations should be exempted from designations made under § 212.51 and restrictions and prohibitions established

under § 212.81, as well as from the prohibitions in §§ 261.13 and 261.14 of the rule. To clarify this intent, the Department is changing the exemption from designations in § 212.51(a)(8) and the corresponding prohibition in § 261.13(h) from “use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations” to “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.” Likewise, the Department is changing the exemption from restrictions and prohibitions in § 212.81(b)(5) and the corresponding prohibition in § 261.14(e) from “use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations” to “use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.”

If a written authorization for such activities as livestock operations, mining, logging, firewood collection, and maintenance of pipelines and utility corridors specifically provides for motor vehicle use, that use is exempted from designations and the prohibition regarding motor vehicle use and may continue. Local Forest Service officials retain the authority to regulate uses under a written authorization and to determine whether and under what conditions to authorize motor vehicle use on routes and in areas not generally open to motor vehicle use.

The Forest Service expects to provide additional guidance on application of these exemptions, including the exemption for “limited administrative use by the Forest Service,” in agency directives which will be published for public notice and comment.

*Comment.* Some respondents asked the Forest Service to provide for limited cross-country travel by motor vehicles for dispersed camping and big game retrieval.

*Response.* The Department believes that some discretion should be provided to local agency officials to consider limited use of motor vehicles within a specified distance of certain designated routes for these specific purposes. Consequently, the final rule includes a new provision in § 212.51(b), which allows the responsible official to include in the designation of a road or trail the limited use of motor vehicles within a specified distance of certain designated routes solely for the purposes of big game retrieval or dispersed camping.

The Department expects the Forest Service to apply this provision sparingly, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to promote consistency in implementation. Provision for cross-country travel for big game retrieval and dispersed camping will be at the discretion of the responsible official. Nothing in this final rule requires inclusion of either activity in a designation, or reconsideration of any decision prohibiting motor vehicle use while engaging in these activities.

On some units, it may be possible to administer motor vehicle use associated with dispersed camping or big game retrieval through a permit system, rather than as a component of a designation. Motor vehicle use specifically authorized under a permit is exempt under § 261.13(h) from the prohibition on motor vehicle use other than in accordance with designations.

*Comment.* Some respondents asked the Forest Service to provide for permits or exemptions for cross-country motor vehicle use by people with disabilities. Some respondents stated that denying access to people with disabilities constitutes discrimination.

*Response.* Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs are welcome on all NFS lands that are open to foot travel and are specifically exempted from the definition of motor vehicle in § 212.1 of the final rule, even if they are battery-powered. However, there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on roads, trails, and areas closed to motor vehicle use because such an exemption could fundamentally alter the nature of the Forest Service's travel management program (7 CFR 15e.103). Reasonable restrictions on motor vehicle use, applied consistently to everyone, are not discriminatory.

*Comment.* Some respondents observed that under § 261.13(h), the responsible official could still issue permits for competitive cross-country motor vehicle events, including motorcycle observed trials (an event in which a rider, under observation, has to navigate natural obstacles without putting a foot down). These respondents requested a specific prohibition of such events on the grounds that they violate the purposes of the rule.

Other respondents sought specific recognition for motorcycle observed trials and other organized events as a

legitimate cross-country use that is not subject to the prohibitions of the rule. These respondents requested provisions in the rule authorizing creation of temporary trails for a single event.

*Response.* The Department declines to establish either a blanket prohibition or a blanket allowance for motor vehicle events. The Department believes that such decisions are best made at the local level, based on public involvement and appropriate environmental analysis. The exemption in § 261.13(h) of the final rule provides local Forest Service officials the discretion to continue to consider requests for permits involving motor vehicle use on a site-specific basis.

Section 261.14. This section of the rule prohibits use of snowmobiles in violation of restrictions or prohibitions established under part 212, subpart C.

Comments related to the prohibition on snowmobile use are addressed in the response to comments on § 261.13 of the proposed rule and in response to comments on the corresponding discussion in the preamble to the proposed rule. No specific comments were received on this section.

Section 261.55. This section of the rule governs NFS trails.

This section was not included in the proposed rule. However, the Department is making technical changes to this section to conform the terminology in the title and introductory text to terminology used elsewhere in the Forest Service's regulations. Specifically, the Department is changing "forest development trails" to "National Forest System trails."

#### *Part 295—Use of Motor Vehicles Off National Forest System Roads*

The proposed rule removed part 295 and integrated its requirements, except for the annual review under § 295.6, into part 212. Comments and responses related to specific changes in the existing rule's language are addressed in this preamble under the corresponding sections of part 212.

#### **Regulatory Certifications in the Proposed Rule**

##### *Environmental Impact*

*Comment.* Some respondents asserted that this rulemaking is a major Federal action with significant effects on the human environment that requires preparation of an environmental impact statement.

*Response.* The Department has determined that this final rule falls within the category of actions excluded from documentation in an environmental assessment or

environmental impact statement under FSH 1909.15, section 31.1b. This provision excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. No extraordinary circumstances enumerated in the Forest Service NEPA procedures exist that would preclude reliance on this categorical exclusion. The final rule would have no effect on users or on the environment until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Specific decisions associated with designation of routes and areas at the local level may trigger the need for documentation of environmental analysis on a case-by-case basis under NEPA.

##### *Regulatory Impact*

*Comment.* Some respondents asserted that the proposed rule would have an annual economic impact of over \$100 million on private landowners, local communities, the recreation industry, small businesses, and State and local governments and therefore should be considered a significant regulatory action under E.O. 12866. Respondents cited statistics on the overall size of the OHV industry in support of this statement.

*Response.* In light of the substantial interest expressed in the proposed rule, the Office of Management and Budget (OMB) has determined that the final rule is significant under E.O. 12866. Accordingly, the Department has prepared a cost-benefit analysis for the final rule. This documentation is available in the rulemaking record.

The Department disagrees that the final rule will have annual economic impacts of over \$100 million. The final rule requires National Forests to designate which roads, trails, and areas are open to motor vehicle use. Once designation is complete, the rule will restrict motor vehicle use to designated roads, trails, and areas and prohibit motor vehicle use on those routes and in those areas that is inconsistent with the designations. Until designation is complete for a particular administrative unit or Ranger District, the rule will have no impact on motor vehicle use on NFS lands. Even after designations are complete, the rule will have no direct economic impact because designations merely will regulate where and, if appropriate, when motor vehicle use will occur on NFS roads, on NFS trails, and in areas on NFS lands.

The Department expects that some user-created routes will become designated roads and trails, after site-specific evaluation. The overall network of routes designated for motor vehicle use would then expand. These designated routes will form a more stable base for long-term management and will receive increased maintenance, through agency resources and cooperative relationships, thereby expanding opportunities for motor vehicle users.

At the same time, unregulated cross-country motor vehicle use will no longer be permitted. Unauthorized routes that are not designated will be closed to motor vehicle use, which would limit opportunities for motor vehicle users but might expand opportunities for other recreational visitors seeking a nonmotorized experience.

The Department does not question respondents' assertion that the OHV industry as a whole has an annual impact of over \$100 million on the national economy. However, only a fraction of this economic activity is associated with use on National Forests and National Grasslands. Moreover, only a fraction of that use represents cross-country motor vehicle travel. Over the long-term, the rule will result in a shift from unregulated, cross-country OHV use to OHV use on a system of designated routes and areas. This shift might have minor impacts on local users and economies, but the national economic impact will be far less than \$100 million annually.

#### *Regulatory Flexibility Act*

*Comment.* Some respondents asserted that the proposed rule would have a significant economic impact on a substantial number of small entities, including OHV dealerships and livestock operations, pursuant to the Regulatory Flexibility Act.

*Response.* The final rule establishes a procedural framework for local decisionmaking and will not have any effect until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Even after designations are complete, the rule will have no direct impact on small entities because designations merely will regulate where and, if appropriate, when motor vehicle use will occur on NFS roads, on NFS trails, and in areas on NFS lands. The Department has determined that the final rule will not have a significant economic effect on a substantial number of small entities because the final rule will not impose recordkeeping

requirements on them, nor will it affect their competitive position in relation to large entities or their cash flow, liquidity, or ability to remain in the market.

#### *No Takings Implications*

*Comment.* One respondent stated that the proposed rule could cause takings of private property when areas closed to motor vehicle use are then established as wilderness areas. Another respondent asserted that the rule revokes or modifies rights-of-way held by miners, inholders, and others, thereby effecting a taking of private property.

*Response.* There is no taking of private property from implementation of this final rule. The final rule applies only to NFS roads, NFS trails, and areas on NFS lands. Any NFS lands that will be closed to motor vehicle use will be Federal lands. Nothing in this rule creates wilderness areas, which can be established only by Congress.

Nothing in the final rule revokes or alters any rights-of-way held by miners, inholders, or others. The final rule merely requires responsible officials to designate which NFS roads, NFS trails, and areas on NFS lands are open to motor vehicle use. In making designations, responsible officials must recognize valid existing rights, including valid reserved and outstanding rights-of-way for a road or trail (§ 212.55(d)).

#### *Civil Justice Reform*

No comments were received on this section of the proposed rule.

#### *Federalism and Consultation and Coordination With Indian Tribal Governments*

*Comment.* One respondent asserted that the proposed rule has tribal implications and may pose a taking of treaty rights guaranteeing access to certain lands.

*Response.* The proposed rule does not have tribal implications pursuant to E.O. 13175. Nothing in the final rule alters or is inconsistent with any treaty rights held by tribal governments.

#### *Energy Effects*

No comments were received on this section of the proposed rule.

#### *Unfunded Mandates*

No comments were received on this section of the proposed rule.

#### *Controlling Paperwork Burdens on the Public*

No comments were received on this section of the proposed rule.

### **3. Regulatory Certifications for the Final Rule**

#### *Environmental Impact*

The final rule requires designation at the field level, with public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use. The final rule would have no effect on users or on the environment until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Section 31.1b of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The Department's conclusion is that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

This final rule is essentially procedural. It has no direct environmental effects, and consideration of extraordinary circumstances would be meaningless at this level. This rule will be implemented through travel management decisions at the administrative unit or Ranger District level, which may have environmental impacts. These site-specific decisions will involve appropriate environmental analysis and documentation.

#### *Regulatory Impact*

This final rule has been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. It has been determined that this is not an economically significant rule. This final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs.

However, in light of the substantial interest expressed in the proposed rule and the important policy issues involved, OMB has determined that the final rule is significant under E.O. 12866. Accordingly, the Department has prepared a cost-benefit analysis for the



final rule. This documentation is available in the rulemaking record.

#### *Regulatory Flexibility Act*

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.). The final rule requires designation at the field level, with public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use. This final rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

#### *No Takings Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630. It has been determined that the final rule will not pose the risk of a taking of private property.

#### *Civil Justice Reform*

This final rule has been reviewed under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

#### *Federalism and Consultation and Coordination With Indian Tribal Governments*

The Department has considered this final rule under the requirements of E.O. 13132 on federalism, and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with tribes is not required.

#### *Energy Effects*

This final rule has been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the E.O.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### *Controlling Paperwork Burdens on the Public*

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

#### **4. Text of the Final Rule**

##### **List of Subjects**

##### *36 CFR Part 212*

Highways and roads, National Forests, Public lands—rights-of-way, and Transportation.

##### *36 CFR Part 251*

Administrative practice and procedure, Electric power, National Forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

##### *36 CFR Part 261*

Law enforcement, National Forests.

##### *36 CFR Part 295*

National Forests, Traffic regulations.

■ Therefore, for the reasons set out in the preamble, amend part 212, subpart B of part 251, and subpart A of part 261, and remove part 295 of title 36 of the Code of Federal Regulations as follows:

#### **PART 212—TRAVEL MANAGEMENT**

■ 1. Amend part 212 by revising the part heading to read as set forth above.

■ 1a. Remove the authority citation for part 212.

■ 2. Designate §§ 212.1 through 212.21 as subpart A to read as set forth below:

#### **Subpart A—Administration of the Forest Transportation System**

■ 2a. Add an authority citation for new subpart A to read as set forth below:

**Authority:** 16 U.S.C. 551, 23 U.S.C. 205.

■ 3. Amend § 212.1 as follows:

■ a. In alphabetical order, add the following definitions: administrative unit; area; designated road, trail, or area; forest road or trail; forest transportation system; motor vehicle; motor vehicle use map; National Forest System road; National Forest System trail; off-highway vehicle; over-snow vehicle; road construction or reconstruction; temporary road or trail; trail; travel management atlas; and unauthorized road or trail; and

■ b. Revise the definitions for forest transportation atlas, forest transportation facility, and road; and

■ c. Remove the definitions for classified road, new road construction, road reconstruction, temporary road, and unclassified road.

#### **§ 212.1 Definitions.**

*Administrative unit.* A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

*Area.* A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

\* \* \* \* \*

*Designated road, trail, or area.* A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to § 212.51 on a motor vehicle use map.

\* \* \* \* \*

*Forest road or trail.* A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

*Forest transportation atlas.* A display of the system of roads, trails, and airfields of an administrative unit.

*Forest transportation facility.* A forest road or trail or an airfield that is



displayed in a forest transportation atlas, including bridges, culverts, parking lots, marine access facilities, safety devices, and other improvements appurtenant to the forest transportation system.

**Forest transportation system.** The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands.

\* \* \* \* \*

**Motor vehicle.** Any vehicle which is self-propelled, other than:

- (1) A vehicle operated on rails; and
- (2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

**Motor vehicle use map.** A map reflecting designated roads, trails, and areas on an administrative unit or a Ranger District of the National Forest System.

\* \* \* \* \*

**National Forest System road.** A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

**National Forest System trail.** A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

**Off-highway vehicle.** Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

**Over-snow vehicle.** A motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow.

\* \* \* \* \*

**Road.** A motor vehicle route over 50 inches wide, unless identified and managed as a trail.

\* \* \* \* \*

**Road construction or reconstruction.** Supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

\* \* \* \* \*

**Temporary road or trail.** A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas.

**Trail.** A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.

**Travel management atlas.** An atlas that consists of a forest transportation

atlas and a motor vehicle use map or maps.

**Unauthorized road or trail.** A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

- 4. Amend § 212.2 by redesignating paragraphs (b) as (d), revising paragraph (a), and adding new paragraphs (b) and (c) to read as follows:

**§ 212.2 Forest transportation program.**

(a) **Travel management atlas.** For each administrative unit of the National Forest System, the responsible official must develop and maintain a travel management atlas, which is to be available to the public at the headquarters of that administrative unit.

(b) **Forest transportation atlas.** A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary road. The content and maintenance requirements for a forest transportation atlas are identified in the Forest Service directives system.

(c) **Program of work for the forest transportation system.** A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

\* \* \* \* \*

- 5. Amend § 212.5 as follows:

■ a. Revise paragraphs (a)(1) and (a)(2)(ii);

■ b. Revise the heading for paragraph (c) introductory text to read as set forth below:

■ c. Revise the heading for paragraph (d) introductory text to read as set forth below:

**§ 212.5 Road system management.**

(a) **Traffic rules.** \* \* \*

(1) **General.** Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261.

(2) **Specific.** \* \* \*

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, all-terrain vehicles, 4-wheel drive vehicles, off-highway vehicles, and trailers. Types of traffic

may include but are not limited to groupings such as commercial hauling, recreation, and administrative.

\* \* \* \* \*

(c) **Cost recovery on National Forest System roads.** \* \* \*

(d) **Maintenance and reconstruction of National Forest System roads by users.**

\* \* \* \* \*

- 6. Amend § 212.7 by revising the paragraph heading and text of paragraph (a) to read as follows:

**§ 212.7 Access procurement by the United States.**

(a) **Existing or proposed forest roads that are or will be part of a transportation system of a State, county, or other local public road authority.** Forest roads that are or will be part of a transportation system of a State, county, or other local public road authority and are on rights-of-way held by a State, county, or other local public road authority may be constructed, reconstructed, improved, or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local public road authority under 23 U.S.C. 205 and the construction, reconstruction, improvement, or maintenance is essential to provide safe and economical access to National Forest System lands.

\* \* \* \* \*

- 7. Amend § 212.10 by revising paragraph (d) to read as follows:

**§ 212.10 Maximum economy National Forest System roads.**

\* \* \* \* \*

(d) By a combination of these methods, provided that where roads are to be constructed at a higher standard than the standard—consistent with applicable environmental laws and regulations—that is sufficient for harvesting and removal of National Forest timber and other products covered by a particular sale, the purchaser of the timber and other products shall not be required to bear the part of the cost necessary to meet the higher standard, and the Chief may make such arrangements to achieve this end as may be appropriate.

\* \* \* \* \*

**§ 212.20 [Removed and reserved]**

- 8. Remove and reserve § 212.20.

- 9. Add a new subpart B to read as follows:

**Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use**

Sec.

212.50 Purpose, scope, and definitions.

212.51 Designation of roads, trails, and areas.

- 212.52 Public involvement.
- 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.
- 212.54 Revision of designations.
- 212.55 Criteria for designation of roads, trails, and areas.
- 212.56 Identification of designated roads, trails, and areas.
- 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

**Authority:** 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

**§ 212.50 Purpose, scope, and definitions.**

(a) *Purpose.* This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

(c) For definitions of terms used in this subpart, refer to § 212.1 in subpart A of this part.

**§ 212.51 Designation of roads, trails, and areas.**

(a) *General.* Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

- (1) Aircraft;
- (2) Watercraft;
- (3) Over-snow vehicles (see § 212.81);
- (4) Limited administrative use by the Forest Service;
- (5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (6) Authorized use of any combat or combat support vehicle for national defense purposes;
- (7) Law enforcement response to violations of law, including pursuit; and

(8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Motor vehicle use for dispersed camping or big game retrieval.* In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

**§ 212.52 Public involvement.**

(a) General. The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

(b) *Absence of public involvement in temporary, emergency closures.* (1) General. Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence. The responsible official

shall provide public notice of the closure pursuant to 36 CFR 261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

**§ 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.**

The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.

**§ 212.54 Revision of designations.**

Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to § 212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in § 212.52, the requirements for coordination with governmental entities in § 212.53, and the criteria in § 212.55, and shall be reflected on a motor vehicle use map pursuant to § 212.56.

**§ 212.55 Criteria for designation of roads, trails, and areas.**

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

(b) *Specific criteria for designation of trails and areas.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

- (1) Damage to soil, watershed, vegetation, and other forest resources;
- (2) Harassment of wildlife and significant disruption of wildlife habitats;

(3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and

(4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official shall consider:

(5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

(c) *Specific criteria for designation of roads.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

(1) Speed, volume, composition, and distribution of traffic on roads; and

(2) Compatibility of vehicle class with road geometry and road surfacing.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

(1) Valid existing rights; and

(2) The rights of use of National Forest System roads and National Forest System trails under § 212.6(b).

(e) *Wilderness areas and primitive areas.* National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

#### **§ 212.56 Identification of designated roads, trails, and areas.**

Designated roads, trails, and areas shall be identified on a motor vehicle use map. Motor vehicle use maps shall be made available to the public at the headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the website of corresponding administrative units and Ranger Districts. The motor vehicle use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

#### **§ 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.**

For each administrative unit of the National Forest System, the responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that responsible

official, consistent with the applicable land management plan, as appropriate and feasible.

■ 10. Add a new subpart C to read as follows:

#### **Subpart C—Use by Over-Snow Vehicles**

Sec.

212.80 Purpose, scope, and definitions.

212.81 Use by over-snow vehicles.

**Authority:** 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

#### **§ 212.80 Purpose, scope, and definitions.**

The purpose of this subpart is to provide for regulation of use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands. For definitions of terms used in this subpart, refer to § 212.1 in subpart A of this part.

#### **§ 212.81 Use by over-snow vehicles.**

(a) *General.* Use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) *Exemptions from restrictions and prohibitions.* The following uses are exempted from restrictions and prohibitions on use by over-snow vehicles:

(1) Limited administrative use by the Forest Service;

(2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(3) Authorized use of any combat or combat support vehicle for national defense purposes;

(4) Law enforcement response to violations of law, including pursuit; and

(5) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.

(c) *Establishment of restrictions and prohibitions.* If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions. In establishing restrictions or prohibitions on use by over-snow vehicles, the responsible official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively).

## **PART 251—LAND USES**

### **Subpart B—Special Uses**

■ 11. Revise the authority citation for part 251, subpart B, to read as follows:

**Authority:** 7 U.S.C. 1011(f); 16 U.S.C. 460/–6a, 460/–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

■ 12. Amend § 251.51 by revising the definitions for “forest road or trail” and “National Forest System road” to read as follows:

#### **§ 251.51 Definitions.**

\* \* \* \* \*

**Forest road or trail.** A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

\* \* \* \* \*

**National Forest System road.** A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

\* \* \* \* \*

## **PART 261—PROHIBITIONS**

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

**Authority:** 7 U.S.C. 1011(f); 16 U.S.C. 460/–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

■ 14. Amend § 261.2 to revise the definitions for “motor vehicle,” “forest road or trail,” “National Forest System road,” and “National Forest System trail,” and add definitions in alphabetical order for “administrative unit” and “area,” to read as follows:

### **Subpart A—General Prohibitions**

\* \* \* \* \*

#### **§ 261.2 Definitions.**

\* \* \* \* \*

**Administrative unit.** A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

\* \* \* \* \*

**Area.** A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

\* \* \* \* \*

*Forest road or trail.* A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

\* \* \* \* \*

*Motor vehicle* means any vehicle which is self-propelled, other than:

- (1) A vehicle operated on rails; and
- (2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

\* \* \* \* \*

*National Forest System road.* A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*National Forest System trail.* A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

\* \* \* \* \*

**§§ 261.13 through 261.21 [Redesignated as §§ 261.15 through 261.23]**

■ 15. Redesignate §§ 261.13 through 261.21 as §§ 261.15 through 261.23.

■ 15a. Add new § 261.13 and § 261.14 to read as follows:

**§ 261.13 Motor vehicle use.**

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have

been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on a motor vehicle use map, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or Ranger District other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

(a) Aircraft;

(b) Watercraft;

(c) Over-snow vehicles;

(d) Limited administrative use by the Forest Service;

(e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(f) Authorized use of any combat or combat support vehicle for national defense purposes;

(g) Law enforcement response to violations of law, including pursuit;

(h) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and

(i) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

**§ 261.14 Use by over-snow vehicles.**

It is prohibited to possess or operate an over-snow vehicle on National Forest System lands in violation of a restriction or prohibition established pursuant to 36 CFR part 212, subpart C, provided

that the following uses are exempted from this section:

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit;

(e) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

■ 16. Amend § 261.55 by revising the introductory text to read as follows:

**§ 261.55 National Forest System trails.**

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail:

\* \* \* \* \*

**PART 295—USE OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM ROADS [REMOVED]**

■ 17. Remove the entire part 295.

Dated: October 19, 2005.

**Mark Rey,**

*Undersecretary of Agriculture for Natural Resources and Environment.*

[FR Doc. 05-22024 Filed 11-8-05; 8:45 am]

**BILLING CODE 3410-11-P**



# Federal Register

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**Wednesday,  
November 9, 2005**

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## **Part V**

## **Department of the Interior**

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### **Fish and Wildlife Service**

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#### **50 CFR Part 17**

**Endangered and Threatened Wildlife and  
Plants; Proposed Designation of Critical  
Habitat for the Contiguous United States  
Distinct Population Segment of the  
Canada Lynx; Proposed Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AU52

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx****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 contiguous United States distinct population segment of the Canada lynx (*Lynx canadensis*) (lynx) pursuant to the Endangered Species Act of 1973, as amended (Act). The lynx generally inhabits cold, moist boreal forests in the contiguous United States. In total, approximately 26,935 square miles (mi<sup>2</sup>) (69,760 square kilometers (km<sup>2</sup>)) fall within the boundaries of the proposed critical habitat designation, in four units in the States of Idaho, Maine, Minnesota, Montana, and Washington. However, we are not proposing to designate all of the area with the boundaries. In particular, we are not including lands within Lynx Analysis Units in the Superior National Forest in Minnesota, because they do not meet the definition of critical habitat pursuant to section 3(5)(A) of the Act as a consequence of the Superior National Forest having amended its Forest Plan to adopt the Lynx Conservation Assessment and Strategy. These lands are not included in the estimated square miles of the proposed designation. In addition, we are not proposing to designate critical habitat on the Federal lands within seven National Forests in Idaho, Montana, and Washington that are covered by the May 2005 Conservation Agreement and therefore do not meet the definition of critical habitat. These lands, however, are included in the estimated square miles of the proposed designation owing to difficulties in obtaining accurate estimates of the area of Federal land within each national forest boundary in a timely manner. This will be corrected in the final designation.

We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other potential impacts of the designation. We are also soliciting public comments on inclusion of certain lands in the designation and on the

appropriateness of excluding lands from this designation that are covered by management plans that provide for the conservation of lynx and our determination as to whether existing management plans provide special management and protection for lynx habitat. In addition, depending on public comment and our analysis at the time of the final designation, any or all of these Forest Service lands described above may be included in the final designation, and we are specifically seeking comment on whether these lands are covered by the definition of critical habitat and should be included in the final designation.

In the development of our final designation, we will incorporate or address any new information received during the public comment period, or from our evaluation of the potential economic impacts of this proposal. We may revise this proposal to address new information, to exclude areas that may warrant exclusion pursuant to section 4(b)(2) of the Act, or to add in those areas determined to be essential to conservation of the species, but not included in this proposal.

**DATES:** We will accept comments from all interested parties until February 7, 2006. We will hold public hearings and informational sessions on the following dates: December 7, 2005, (Minnesota); December 14, 2005, (Maine); January 10, 2006, (Montana); and January 18, 2006, (Washington) (see **SUPPLEMENTARY INFORMATION** section, below, for locations and times).

**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 by mail or hand-delivery to Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Office, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

2. You may submit oral and/or written comments and information at the public hearings (see **SUPPLEMENTARY INFORMATION**, below, for locations and times).

3. You may send comments by electronic mail (e-mail) to [fw6\\_lynx@fws.gov](mailto:fw6_lynx@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 Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Office at 406-449-5339.

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 Montana Ecological Services Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lori Nordstrom, Montana Ecological Services Office (address above), telephone 406-449-5225; facsimile 406-449-5339.

**SUPPLEMENTARY INFORMATION:** Public hearings and informational sessions on this proposal will be held in the following locations:

**Maine**

Wednesday, December 14, 2005, from 8 to 9 p.m. at the Black Bear Inn and Conference Center, 4 Godfrey Drive, Orono, Maine. The hearing will be preceded by an informational session from 7 to 8 p.m.

**Minnesota**

Wednesday, December 7, 2005, from 7:30 to 9 p.m. at The Inn on Lake Superior, 350 Canal Park Drive, Duluth, Minnesota. The hearing will be preceded by an informational session from 6 to 7:30 p.m.

**Montana**

Tuesday, January 10, 2006, from 6 to 8 p.m. at Westcoast Kalispell Center, 20 North Main Street, Kalispell, Montana. The hearing will be preceded by an informational session from 4:30 to 6 p.m.

**Washington**

Wednesday, January 18, 2006, from 7 to 8:30 p.m. at Methow Valley Community Center, 201 South Methow Valley, Hwy 20, Twisp, Washington. The hearing will be preceded by an informational session from 5 to 6:30 p.m.

**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, concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Maps of the proposed critical habitat are available for viewing by appointment during regular business hours at (1) The Montana Ecological Services Office (see **ADDRESSES**); (2) the Service offices identified in the Section 7 Consultation section below (Maine Field Office (Old Town, ME), Twin Cities Field Office (Bloomington, MN), and the Upper Columbia River Basin Office (Spokane, WA)); or (3) the Internet at <http://>

[mountain-prairie.fws.gov/species/mammals/lynx/](http://mountain-prairie.fws.gov/species/mammals/lynx/).

On the basis of public comment, during the development of the final rule we may find, among other things, that areas proposed are not essential to the conservation of the species or do not require special management considerations or protection, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion, and in all of these cases, this information will be incorporated into the final designation. Final management plans and data supporting their effectiveness that address the conservation of the lynx must be submitted to us during the public comment period so that we can take them into consideration when making our final critical habitat determination.

### Comments Are Invited Specifically 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, but not limited to, whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of lynx habitat in the contiguous United States, and what occupied habitat has features that are essential to the conservation of the species and why and what unoccupied habitat is essential to the conservation of the species and why;

(3) Comments or information that may assist us with identifying or clarifying the Primary Constituent Elements (PCEs);

(4) Land use designations and current or planned activities in areas proposed as critical habitat and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(6) As discussed in this proposed rule, we are considering whether some of the lands we have identified as having features essential for the conservation of the lynx should not be included in the final designation of critical habitat if, prior to the final critical habitat designation, they are covered by final management plans that incorporate the conservation measures for the lynx (*i.e.*, the Lynx Conservation Assessment and Strategy (LCAS) (Ruediger *et al.* 2000), or comparable). In particular, seven National Forests and one Bureau of Land Management (BLM) district are in the process of revising or amending their Land and Resource Management

Plans (LRMP) to provide measures for lynx conservation. It is anticipated that all of these plans will be complete prior to promulgation of the final critical habitat designation. As a result, all National Forest and BLM plans would have measures that provide for conservation of lynx, and consequently will not be in need of special management or protection.

Currently, National Forests that have not revised or amended their LRMPs operate under a Conservation Agreement with the Service in which the parties agree to take measures to reduce or eliminate adverse effects or risks to lynx and its occupied habitat pending amendments to LRMPs. The LCAS is a basis for implementing this Agreement.

In addition, we will be evaluating the adequacy of existing management plans to conserve lynx on lands that are designated wilderness areas or National Parks, as discussed in this proposed rule.

We specifically solicit comment on whether such areas meet the definition of critical habitat based on:

(A) Whether these areas contain features essential to the conservation of the lynx;

(B) The adequacy of these management plans or the Conservation Agreement to provide special management and protection to lynx habitat;

Any of these lands identified above may, if appropriate, be included in the final critical habitat designation, even if not proposed for designation in this notice.

(7) Our proposal to not include tribal lands in the Maine and Minnesota units under the Secretarial Order Number 3206. The size of the individual reservation lands in the Maine and Minnesota units is relatively small. As a result, we believe conservation of the lynx can be achieved by limiting the designation to the other lands in the proposed units (see "Relationship of Critical Habitat to Tribal Lands" below).

(8) Whether lands in three areas are essential for the conservation of the species and the basis for why they might be essential. These areas are: (a) The Greater Yellowstone Ecosystem (Wyoming, Montana, and Idaho); (b) the "Kettle Range" in Ferry County, Washington; and (c) the Southern Rocky Mountains.

(9) How the proposed boundaries of critical habitat units could be refined to more closely conform to the boreal forest types occupied by lynx. Maps that accurately depict the specific vegetation types on all land ownerships were not readily available. Additionally, even if

accurate, detailed vegetation maps were available, we were unsure how to delineate and describe critical habitat boundaries that solely encompassed lands containing the features essential to the conservation of the lynx.

(10) 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\\_lynx@fws.gov](mailto:fw6_lynx@fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: lynx comments" 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 Montana Ecological Services Office at telephone number 406-449-5225.

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 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 Endangered Species 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 466 species or 35 percent of the 1,268 listed species in the United States under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,268 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.

We note, however, that the August 6, 2004, Ninth Circuit judicial opinion, (*Gifford Pinchot Task Force v. United States Fish and Wildlife Service*) found our definition of adverse modification invalid. In response to the decision, the Director has provided guidance to the Service based on the statutory language. In this rule, our analysis of the consequences and relative costs and benefits of the critical habitat designation is based on application of the statute consistent with the 9th Circuit's ruling and the Director's guidance.

#### *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**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this

proposed rule. For more information on the lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), and the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076).

Canada lynx are medium-sized cats, generally measuring 75 to 90 centimeters (cm) (30 to 35 inches (in)) long and weighing 8 to 10.5 kilograms (18 to 23 pounds) (Quinn and Parker 1987). They have large, well-furred feet and long legs for traversing snow; tufts on the ears; and short, black-tipped tails.

Lynx are highly specialized predators of snowshoe hare (*Lepus americanus*) (McCord and Cardoza 1982; Quinn and Parker 1987; Aubry *et al.* 2000). Lynx and snowshoe hares are strongly associated with what is broadly described as boreal forest (Bittner and Rongstad 1982; McCord and Cardoza 1982; Quinn and Parker 1987; Agee 2000; Aubry *et al.* 2000; Hodges 2000a, b; McKelvey *et al.* 2000b). The predominant vegetation of boreal forest is conifer trees, primarily species of spruce (*Picea* spp.) and fir (*Abies* spp.) (Elliot-Fisk 1988). In the contiguous United States, the boreal forest types transition to deciduous temperate forest in the Northeast and Great Lakes, and to subalpine forest in the West (Agee 2000). Lynx habitat can generally be described as moist boreal forests that have cold, snowy winters and a snowshoe hare prey base (Quinn and Parker 1987; Agee 2000; Aubry *et al.* 2000; Buskirk *et al.* 2000b; Ruggiero *et al.* 2000).

Snow conditions also determine the distribution of lynx (Ruggiero *et al.* 2000). Lynx are morphologically and physiologically adapted for hunting snowshoe hares and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats (*Lynx rufus*) or coyotes (*Canis latrans*) (McCord and Cardoza 1982; Buskirk *et al.* 2000a; Ruediger *et al.* 2000; Ruggiero *et al.* 2000). Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx. Therefore, bobcats and coyotes cannot efficiently hunt in fluffy or deep snow and are at a competitive disadvantage to lynx. Long-term snow conditions presumably limit the winter distribution of potential lynx competitors such as bobcats (McCord and Cardoza 1982) or coyotes.

Because of the patchiness and temporal nature of high-quality snowshoe hare habitat, lynx populations



require large boreal forest landscapes to ensure that sufficient high-quality snowshoe hare habitat is available at any point in time and to ensure that lynx may move freely among patches of suitable habitat and among subpopulations of lynx. Populations that are composed of a number of discrete subpopulations, connected by dispersal, are called metapopulations (McKelvey *et al.* 2000c). Individual lynx maintain large home ranges (reported as generally ranging between 31–216 km<sup>2</sup> [12–83 mi<sup>2</sup>]) (Koehler 1990; Aubry *et al.* 2000; Squires and Laurion 2000; Squires *et al.* 2004b; Vashon *et al.* 2005a). The size of lynx home ranges varies depending on the abundance of prey, the animal's gender and age, season, and the density of the lynx population (Koehler 1990; Poole 1994; Slough and Mowat 1996; Aubry *et al.* 2000; Mowat *et al.* 2000; Vashon *et al.* 2005a). When densities of snowshoe hares decline, for example, lynx enlarge their home ranges to obtain sufficient amounts of food to survive and reproduce.

In the contiguous United States, the boreal forest landscape is naturally patchy and transitional because it is the southern edge of the boreal forest range. This generally limits snowshoe hare populations in the contiguous United States from achieving densities similar to those of the expansive northern boreal forest in Canada (Wolff 1980; Buehler and Keith 1982; Koehler 1990; Koehler and Aubry 1994). Additionally, the presence of more snowshoe hare predators and competitors at southern latitudes may inhibit the potential for high-density hare populations (Wolff 1980). As a result, lynx generally occur at relatively low densities in the contiguous United States as compared to the high lynx densities in the northern boreal forest of Canada (Aubry *et al.* 2000) or the densities of a species such as the bobcat, which is a habitat and prey generalist.

Lynx are highly mobile; long-distance movements (greater than 100 km (60 mi)) are characteristic (Aubry *et al.* 2000; Mowat *et al.* 2000). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985; O'Donoghue *et al.* 1997; Poole 1997). Subadult lynx also disperse even when prey is abundant (Poole 1997), presumably to establish new home ranges. Lynx also make exploratory movements outside their home ranges (Aubry *et al.* 2000; Squires *et al.* 2001).

The boreal forest landscape is naturally dynamic. Forest stands within the landscape change as they undergo succession after natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and forest

management (Elliot-Fisk 1988, Agee 2000). As a result, lynx habitat within the boreal forest landscape is typically patchy because the boreal forest contains stands of differing ages and conditions, only some of which are suitable as lynx foraging or denning habitat at any point in time (McKelvey *et al.* 2000a; Hoving *et al.* 2004).

Snowshoe hares comprise a majority of the lynx diet (Nellis *et al.* 1972; Brand *et al.* 1976; Koehler 1990; Apps 2000; Aubry *et al.* 2000; Mowat *et al.* 2000; von Kienast 2003; Squires *et al.* 2004b). When snowshoe hare populations are low, female lynx produce few or no kittens that survive to independence (Nellis *et al.* 1972; Brand *et al.* 1976; Brand and Keith 1979; Poole 1994; Slough and Mowat 1996; O'Donoghue *et al.* 1997; Aubry *et al.* 2000; Mowat *et al.* 2000). Lynx prey opportunistically on other small mammals and birds, particularly during lows in the snowshoe hare population, but alternate prey species may not sufficiently compensate for low availability of snowshoe hares, resulting in reduced lynx populations (Brand *et al.* 1976; Brand and Keith 1979; Koehler 1990; Mowat *et al.* 2000).

In northern Canada, lynx populations fluctuate in response to the cycling of snowshoe hare populations (Hodges 2000a; Mowat *et al.* 2000). Although snowshoe hare populations in the northern portion of their range show strong, regular population cycles, these fluctuations are generally much less pronounced in the southern portion of the range in the contiguous United States (Hodges 2000b). In the contiguous United States, the degree to which regional local lynx population fluctuations are influenced by local snowshoe hare population dynamics is unclear. However, it is anticipated that because of natural fluctuations in snowshoe hare populations, there will be periods when lynx densities are extremely low.

Because lynx population dynamics, survival and recruitment are closely tied to snowshoe hare availability, snowshoe hare habitat is a component of lynx habitat. Lynx generally concentrate their foraging and hunting activities in areas where snowshoe hare populations are high (Koehler *et al.* 1979; Ward and Krebs 1985; Murray *et al.* 1994; O'Donoghue *et al.* 1997, 1998). Snowshoe hares are most abundant in forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982; Litvaitis *et al.* 1985; Hodges 2000a, b). Generally, hare densities are higher in regenerating, earlier successional forest

stages because they have greater understory structure than mature forests (Buehler and Keith 1982; Wolfe *et al.* 1982; Koehler 1990; Hodges 2000b; Homyack 2003; Griffin 2004). However, snowshoe hares can be abundant in mature forests with dense understories (Griffin 2004).

Within the boreal forest, lynx den sites are located where coarse woody debris, such as downed logs and windfalls, provides security and thermal cover for lynx kittens (McCord and Cardoza 1982; Koehler 1990; Slough 1999; Squires and Laurion 2000; J. Organ, Service, in litt. 2001). The amount of structure (*e.g.*, downed, large woody debris) appears to be more important than the age of the forest stand for lynx denning habitat (Mowat *et al.* 2000).

### Previous Federal Actions

For more information on previous Federal actions concerning the lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), and the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076). As a result of litigation from Defenders of Wildlife, *et al.*, the U.S. District Court for the District of Columbia instructed us to propose critical habitat by November 1, 2005, and to issue a final rule for critical habitat by November 1, 2006. This proposal has been completed in compliance with the Court order.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical 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 geographical 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 of the Act requires consultation on Federal actions that are

likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent element, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing 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 may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific 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 at the time of listing.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require 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. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert

opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted 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 scientific information available 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 section 4(b)(2) of the Act, we use the best scientific data available in determining critical habitat. We have reviewed the approach to the conservation of the lynx provided in a recovery outline (Service 2005); information from State, Federal and Tribal agencies; and information from academia and private organizations that have collected scientific data on lynx.

The Service recently completed a recovery outline for the lynx (Service 2005). Recovery outlines are brief, internally-developed documents intended as preliminary strategies for conservation of listed species until a formal recovery plan is completed (F. Dunkle, USFWS, in litt. 1989). Development of a formal recovery plan for lynx has not yet begun. The lynx recovery outline was prepared by

Service staff experienced in lynx conservation and/or recovery planning under the Act and two lynx experts from the U.S. Forest Service (USFS). The lynx recovery outline presents current understandings of historical and current lynx distribution, ecology, and population dynamics. The outline introduces concepts regarding the relative importance of different geographic areas to the persistence of lynx in the contiguous United States, identifying areas as either core, provisional core, secondary or peripheral based on lynx records over time and evidence of reproduction. Additionally, the outline describes preliminary recovery objectives and actions.

We also reviewed available information that pertains to the habitat requirements of this species and its principal prey, the snowshoe hare. This included data in reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; research published in peer-reviewed articles, presented in academic theses, agency reports and unpublished data; and various Geographic Information System (GIS) coverages (*e.g.*, land cover type information, land ownership information, snow depth information, topographic information, locations of lynx obtained from radio- or GPS-collars and locations of lynx confirmed via DNA analysis or other verified records).

In evaluating areas to propose as critical habitat we first determined the geographic area occupied by the species. We utilized data providing verified evidence of the occurrence of lynx and evidence of the presence of breeding lynx populations as represented by records of lynx reproduction. We utilized records since 1995 to ensure that this proposed critical habitat designation is based on the data that most closely represents the current status of lynx in the contiguous United States and the geographic area occupied by the species. Data that define the historic and current range of the lynx (*e.g.*, McKelvey *et al.* 2000b; Hoving *et al.* 2003) constitute the geographic area that may be occupied by the species; therefore, we determined that areas outside the historic distribution are not essential to the conservation of the species. Although the average life span of a wild lynx is not known, we have assumed that a lynx born in 1995 could have been alive in 2000 or 2003, the dates of publication of the final listing rule and the clarification of findings. Furthermore, lynx-related research in the contiguous United States substantially increased after the 1998 proposal to list, providing additional

information on which to base this proposed critical habitat designation. These recent verified records were provided by Federal research entities, state wildlife agencies, academic researchers, and private individuals or organizations working on lynx (K. Aubry, Pacific Northwest Research Station, unpubl. data; S. Gehman, Wildthings Unlimited, unpubl. data; S. Gniadek, Glacier National Park, unpubl. data; S. Loch, Independent Scientist, and E. Lindquist, Superior National Forest, unpubl. data; K. McKelvey, Rocky Mountain Research Station; unpubl. data; Minnesota Department of Natural Resources 2005; R. Moen, University of Minnesota, Natural Resources Research Institute, unpubl. data.; J. Squires, Rocky Mountain Research Station, unpubl. data; J. Vashon, Maine Department of Inland Fisheries and Wildlife, unpubl. data).

By accepting only verified recent lynx records, we restricted the available lynx occurrence dataset because we wanted reliable data for the purposes of evaluating areas and features for critical habitat designation. The reliability of lynx occurrence reports can be questionable because the bobcat, a common species, can be confused with the lynx, which is similar in appearance. Additionally, many surveys are conducted by snow tracking in which correct identification of tracks can be difficult because of variable conditions affecting the quality of the track and variable expertise of the tracker. Our definition of a verified lynx record is modified from McKelvey *et al.* (2000b)—(1) An animal (live or dead) in hand or observed closely by a person knowledgeable in lynx identification, (2) genetic (DNA) confirmation, (3) snow tracks only when confirmed by genetic analysis (see for example Murphy *et al.* 2004; McKelvey *et al.* in press) or (4) location data from radio- or GPS-collared lynx. Documentation of lynx reproduction consists of lynx kittens in hand, or observed with the mother by someone knowledgeable in lynx identification, or snow tracks demonstrating family groups traveling together, as identified by a person highly knowledgeable in identification of carnivore tracks.

The geographical area occupied by the species was then delineated to encompass areas containing features essential to the conservation of the lynx, the majority of recent lynx records, evidence of breeding lynx populations, the boreal forest type that is currently occupied by lynx in that particular region and direct connectivity with lynx populations in Canada. Lynx populations in the contiguous United

States seem to be influenced by lynx population dynamics in Canada (Thiel 1987; McKelvey *et al.* 2000a, c). Many of these populations in Canada are directly interconnected with United States populations, and are likely a source of emigration into contiguous United States lynx populations. Therefore, we assume that retaining connectivity with larger lynx populations in Canada is important to ensuring long-term persistence of lynx populations in the United States. We assume that, regionally, lynx within the contiguous United States and adjacent Canadian provinces interact as metapopulations. Where available, data on historic average snow depths and bobcat harvest provided additional insight for refining and delineating appropriate boundaries. In Maine and Minnesota, we used the international border with Canada and roads or township lines where possible for ease in description and clarity. In the North Cascades and Northern Rockies, the features essential to the conservation of lynx, the majority of lynx records, evidence of reproduction, and the boreal forest types are found above 4,000 feet (ft) (1,219 meters [m]) in elevation (McKelvey *et al.* 2000b; K. McAllister *et al.* USFS, in litt. 2000). Thus we limited the delineation of proposed critical habitat to lands above this elevation. Additionally, in the North Cascades, features essential to the conservation of the lynx and the majority of the lynx records and evidence of reproduction are from east of the crest of the Cascade Mountains. Therefore, in the Cascades we used the international border with Canada, the Cascade crest and the 4,000-ft (1,219 m) elevation contour east of the crest as the boundary. In the Northern Rockies, the 4,000-ft (1,219 m) contour was used as the primary boundary west of the Continental Divide. However, the climatic effects of the Continental Divide cause the 4,000-ft (1,219 m) elevation contour to be too broad east of the Continental Divide, such that it includes substantial areas of grassland habitats that do not contain features essential to the conservation of the lynx or important for snowshoe hares. Therefore, east of the Continental Divide in the Northern Rockies, we used USFS and National Park Service (NPS) boundaries to circumscribe critical habitat boundaries to more closely encompass essential features, recent records of lynx, including records of reproduction, and boreal forest currently occupied by lynx. The northern boundary for the Northern Rockies unit is the International border with Canada.

### 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 data available and to consider those physical and biological features (primary constituent element) that are essential to the conservation of the species, and that may require special management considerations or protection. The regulations indicate these may 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 area proposed for designation as critical habitat provides boreal forest habitat for breeding, non-breeding, and dispersing lynx in metapopulations across the species' range in the contiguous United States. No areas are being proposed solely because they provide habitat for dispersing animals. At this time, the biological or physical features of habitats lynx choose for dispersal is not well-understood; while it is assumed lynx would prefer to travel where there is forested cover, the literature contains many examples of lynx crossing large, unforested openings (*e.g.*, Roe *et al.* 2000). The areas being proposed as critical habitat serve a variety of functions that include acting as a source of dispersing animals and providing habitat that may serve as travel corridors to facilitate dispersal and exploratory movements. The features or habitat components essential for the conservation of the species were determined from studies of lynx and snowshoe hare ecology.

The specific biological and physical features, otherwise known as the primary constituent elements, essential to the conservation of the lynx are:

(1) Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(a) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees or shrubs tall enough to protrude above the snow; and

(b) Winter snow conditions that are generally deep and fluffy for extended periods of time; and

(c) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads.

A description of the primary constituent elements are described below.

*Boreal Forest Landscapes (Space for Individual and Population Growth and Normal Behavior)*

Lynx populations respond to biotic and abiotic factors at different scales. At the regional scale, snow conditions, boreal forest, and competitors (especially bobcat) influence the species' range (Aubry *et al.* 2000; McKelvey *et al.* 2000b; Hoving *et al.* 2005). At the landscape scale within each region, natural and human-caused disturbance processes (*e.g.*, fire, wind, insect infestations and forest management) influence the spatial and temporal distribution of lynx populations by affecting the distribution of good habitat for snowshoe hares (Agee 2000; Ruediger *et al.* 2000). At the stand-level scale, quality, quantity, and juxtaposition of habitats influence home range size, productivity, and survival (Aubry *et al.* 2000; Vashon *et al.* 2005a). At the substand scale, spatial distribution and abundance of prey and microclimate influence movements, hunting behavior, den, and resting site locations.

All of the primary constituent elements of critical habitat for lynx are found in what is broadly described as the boreal forest landscape. In the contiguous United States, the boreal forest is more transitional rather than true boreal forest of northern Canada and Alaska (Agee 2000). This difference is because the boreal forest is at its southern limits in the contiguous United States, where it transitions to deciduous temperate forest in the northeast and Great Lakes and subalpine forest in the west (Agee 2000). We use the term "boreal forest" because it generally encompasses most of the vegetative descriptions of the transitional forest types that comprise lynx habitat in the contiguous United States (Agee 2000).

At a regional scale, lynx habitat is within the areas that generally support deep snow throughout the winter and that support boreal forest vegetation types (see below for more detail). In eastern North America, lynx distribution was strongly associated with areas of deep snowfall (greater than 268 cm (105 in) of mean annual snowfall) and 100 km<sup>2</sup> (40 mi<sup>2</sup>) landscapes with a high proportion of regenerating forest (Hoving 2001). Hoving *et al.* (2004) concluded that the broad geographic distribution of lynx in

eastern North America is most influenced by snowfall, but within areas of similarly deep snowfall, measures of forest succession become more important factors in determining lynx distribution.

As described above (see "Background"), boreal forests used by lynx are cool, moist and dominated by conifer tree species, primarily spruce and fir (Elliot-Fisk 1988; Agee 2000; Aubry *et al.* 2000; Ruediger *et al.* 2000). Boreal forest landscapes used by lynx are a heterogeneous mosaic of vegetative cover types and successional forest stages created by natural and human-caused disturbances (McKelvey *et al.* 2000a). Periodic vegetation disturbances stimulate development of dense understory or early successional habitat for snowshoe hares (Ruediger *et al.* 2000). In Maine, lynx were positively associated with landscapes altered by clearcutting 15 to 25 years previously (Hoving *et al.* 2004).

The overall quality of the boreal forest landscape matrix and juxtaposition of stands in suitable condition within the landscape is important for both lynx and snowshoe hares in that it can influence connectivity or movements between suitable stands, availability of food and cover and spatial structuring of populations or subpopulations (Hodges 2000b; McKelvey *et al.* 2000a; Ricketts 2001; Walker 2005). For example, lynx foraging habitat must be near denning habitat to allow females to adequately provision dependent kittens, especially when the kittens are relatively immobile. In north-central Washington, hare densities were higher in landscapes with an abundance of dense boreal forest interspersed with small patches of open habitat, in contrast to landscapes composed primarily of open forest interspersed with few dense vegetation patches (Walker 2005). Similarly, in northwest Montana, connectivity of dense patches within the forest matrix benefited snowshoe hares (Ausband and Baty 2005). In mountainous areas, lynx appear to prefer flatter slopes (Apps 2000; McKelvey *et al.* 2000d; von Kienast 2003; Maletzke 2004).

Individual lynx require large portions of boreal forest landscapes to support their home ranges and to facilitate dispersal and exploratory travel. The size of lynx home ranges is believed to be strongly influenced by the quality of the habitat, particularly the abundance of snowshoe hares, in addition to other factors such as gender, age, season, and density of the lynx population (Aubry *et al.* 2000; Mowat *et al.* 2000). Generally, females with kittens have the smallest home ranges while males have the largest home ranges (Moen *et al.* 2004).

Reported home range size varies from 31 km<sup>2</sup> (12 mi<sup>2</sup>) for females and 68 km<sup>2</sup> (26 mi<sup>2</sup>) for males in Maine (Vashon *et al.* 2005a) to much larger ranges of 88 km<sup>2</sup> (34 mi<sup>2</sup>) for females and 216 km<sup>2</sup> (83 mi<sup>2</sup>) for males in northwest Montana (Squires *et al.* 2004b).

## Forest Type Associations

### Maine

Lynx were more likely to occur in 100 km<sup>2</sup> (40 mi<sup>2</sup>) landscapes with regenerating forest, and less likely to occur in landscapes with recent clearcut or partial harvest, (Hoving *et al.* 2004). Lynx in Maine select softwood (spruce and fir) dominated regenerating stands (Vashon *et al.* 2005a). Regenerating stands used by lynx generally develop 15–30 years after forest disturbance and are characterized by dense horizontal structure and high stem density within a meter of the ground. These habitats support high snowshoe hare densities (Homyack 2003; Fuller and Harrison 2005; Vashon *et al.* 2005a). At the stand scale, lynx in northwestern Maine selected older (11 to 26 year-old), tall (4.6 to 7.3 m (15 to 24 ft)) regenerating clearcut stands and older (11 to 21 year-old) partially harvested stands (A. Fuller, University of Maine, unpubl. data).

### Minnesota

In Minnesota, lynx primarily occur in the Northern Superior Uplands Ecological Section of the Laurentian Mixed Forest Province. Historically, this area was dominated by red pine (*Pinus resinosa*) and white pine (*P. strobus*) mixed with aspen (*Populus spp.*), paper birch (*Betula papyrifera*), spruce, balsam fir (*A. balsamifera*) and jack pine (*P. banksiana*) (Minnesota Department of Natural Resources [Minnesota DNR] 2003).

Preliminary research suggests lynx in Minnesota generally use younger stands (less than 50 years) with a conifer component in greater proportion than their availability (R. Moen, University of Minnesota, unpubl. data). Lynx prefer predominantly upland forests dominated by red pine, white pine, jack pine, black spruce (*P. mariana*), paper birch, quaking aspen (*P. tremuloides*), or balsam fir (R. Moen, unpubl. data).

### Washington

In the North Cascades in Washington, the majority of lynx occurrences were found above 1,250 m (4,101 ft) elevation (McKelvey *et al.* 2000b,d; von Kienast 2003; Maletzke 2004). In this area, lynx selected Engelmann spruce (*P. engelmannii*)-subalpine-fir (*A. lasiocarpa*) forest cover types in winter

(von Kienast 2003, Maletzke 2004). Lodgepole pine (*P. contorta*) is a dominant tree species in the earlier successional stages of these climax cover types. Seral lodgepole stands contained dense understories and therefore received high use by snowshoe hares and lynx (Koehler 1990; McKelvey *et al.* 2000d).

#### Northern Rockies

In the Northern Rocky Mountains, the majority of lynx occurrences are associated with the Rocky Mountain Conifer Forest vegetative class (Kuchler 1964; McKelvey *et al.* 2000b) and occur above 1,250 m (4,101 ft) elevation (Aubry *et al.* 2000; McKelvey *et al.* 2000b). The dominant vegetation that constitutes lynx habitat in these areas is subalpine fir, Engelmann spruce and lodgepole pine (Aubry *et al.* 2000; Ruediger *et al.* 2000). As in the Cascades, lodgepole pine is an earlier successional stage of subalpine fir and Engelmann spruce climax forest cover types.

#### a. Snowshoe Hares (Food)

Snowshoe hare density is the most important factor explaining the persistence of lynx populations (Steury and Murray 2004). A minimum snowshoe hare density necessary to maintain a persistent, reproducing lynx population within the contiguous United States has not been determined, although Ruggiero *et al.* (2000) suggested that at least 0.5 hares per hectare (ha) (0.2 hares per acre (ac)) may be necessary. Steury and Murray (2004) modeled lynx and snowshoe hare populations and predicted that a minimum of 1.1 to 1.8 hares per ha (0.4 to 0.7 hares per ac) was required for persistence of a reintroduced lynx population in the southern portion of the lynx range.

The boreal forest landscape must contain a mosaic of forest stand successional stages to sustain lynx populations over the long term as the condition of individual stands changes over time. If the vegetation potential (or climax forest type) of a particular forest stand is conducive to supporting abundant snowshoe hares, it likely will also go through successional phases that are unsuitable as lynx foraging (snowshoe hare habitat) or lynx denning habitat (Agee 2000; Buskirk *et al.* 2000b). For example, a boreal forest stand where there has been recent disturbance, such as fire or timber harvest, resulting in little or no understory structure is unsuitable as snowshoe hare habitat for lynx foraging. That temporarily unsuitable stand may regenerate into suitable snowshoe hare

(lynx foraging) habitat within 10 to 25 years, depending on local conditions (Ruediger *et al.* 2000). Forest management techniques that thin the understory, however, may render the habitat unsuitable for hares and, thus, for lynx (Ruediger *et al.* 2000; Hoving *et al.* 2004). Stands may continue to provide suitable snowshoe hare habitat for many years until woody stems in the understory become too sparse, as a result of undisturbed forest succession or management (e.g., clearcutting or thinning). Thus, if the vegetation potential of the stand is appropriate, a stand that is not currently in a condition that is suitable to support abundant snowshoe hares for lynx foraging or coarse woody debris for den sites has the capability to develop into suitable habitat for lynx and snowshoe hares with time.

As described previously, snowshoe hares prefer boreal forest stands that have a dense horizontal understory to provide food, cover and security from predators. Snowshoe hares feed on conifers, deciduous trees and shrubs (Hodges 2000b). Snowshoe hare density is correlated to understory cover between approximately 1 to 3 m (3 to 10 ft) above the ground or snow level (Hodges 2000b). Habitats most heavily used by snowshoe hares are stands with shrubs, stands that are densely stocked, and stands at ages where branches have more lateral cover (Hodges 2000b). In Maine, unthinned stands supporting 1.83 hares per ha (0.7 hares per ac) had average stem densities of 11,600 stems per ha (4700 stems per ac) (Homyack *et al.* 2004). In northcentral Washington, snowshoe hare density was highest in 20 year old lodgepole pine stands where the average density of trees and shrubs was 15,840 stems per ha (6415 stems per ac) (Koehler 1990). Generally, earlier successional forest stages support a greater density of horizontal understory and more abundant snowshoe hares (Buehler and Keith 1982; Wolfe *et al.* 1982; Koehler 1990; Hodges 2000b; Homyack 2003; Griffin 2004); however, sometimes mature stands also can have adequate dense understory to support abundant snowshoe hares (Griffin 2004).

In Maine, the highest snowshoe hare densities were found in regenerating softwood (spruce and fir) and mixedwood stands (Homyack 2003, Fuller and Harrison 2005). In the north Cascades, the highest snowshoe hare densities were found in 20-year-old seral lodgepole pine stands with a dense understory (Koehler 1990). In montane and subalpine forests in northwest Montana, the highest snowshoe hare densities in summer were generally in younger stands with dense forest

structure, whereas in winter, snowshoe hare densities were as high or higher in mature stands with dense understory forest structure (Griffin 2004). Snowshoe hare studies are just underway in Minnesota (University of Minnesota Web site <http://www.nrri.umn.edu/lynx/research.html>); therefore, results are not available at this time.

Habitats supporting abundant snowshoe hares must be present in a large proportion of the landscape to support a viable lynx population. Broad-scale snowshoe hare density estimates are not available for the areas being proposed as lynx critical habitat; available snowshoe hare density estimates are only applicable for the immediate area and time frame for which the study was conducted and cannot be extrapolated further.

#### b. Snow Conditions (Other Physiological Requirements)

As described in the "Background" above, snow conditions also determine the distribution of lynx. Deep, fluffy snow conditions likely restrict potential competitors such as bobcat or coyote from effectively encroaching on or hunting in winter lynx habitat. Snowfall was the strongest predictor of lynx occurrence at a regional scale (Hoving *et al.* 2005). In addition to snow depth, other snow properties, including surface hardness or sinking depth, are important factors in the spatial, ecological, and genetic structuring of the species (Stenseth *et al.* 2004).

In the northeastern United States, lynx are most likely to occur in areas with a 10-year mean annual snowfall greater than 268 cm (105 in) (Hoving 2001). The Northern Superior Uplands section of Minnesota, which roughly corresponds to the area proposed as critical habitat, receives more of its precipitation as snow than any section in the State, has the longest period of snow cover, and the shortest growing season (Minnesota DNR 2003). Mean annual snowfall from 1971 to 2000 in this area was generally greater than 149 cm (55 in) (University of Minnesota 2005).

Information on average snowfall or snow depths in mountainous areas such as the Cascades or northwest Montana is limited because there are few weather stations in these regions that have measured snow fall or snow depth over time. An important consideration is that the topography strongly influences local snow conditions. In the Cascades, at the Mazama station, average annual snowfall from 1948 to 1976 was 292 cm (115 in) (Western Regional Climate Center 2005). In Montana, at the Seeley

Lake Ranger Station, average annual snowfall from 1948 to 2005 was 315 cm (124 in), while at the Troy station the average total snowfall from 1961 to 1994 was 229 cm (90 in) (Western Regional Climate Center 2005).

#### c. Denning Habitat (Sites for Reproduction and Rearing of Offspring)

Lynx den sites are found in mature and younger boreal forest stands that have a large amount of cover and downed, large woody debris. The structural components of lynx den sites are common features in managed (logged) and unmanaged (e.g., insect damaged, wind-throw) stands. Downed trees provide excellent cover for den sites and kittens and often are associated with dense woody stem growth.

Sub-stand characteristics were evaluated for 26 lynx dens from 1999 to 2004 in northwest Maine. Dens were found in several stand types. Modeling of den site variables determined that tip-up mounds (exposed roots from fallen trees) alone best explained den site selection (J. Organ, Service, unpubl. data). Tip-up mounds may purely be an index of downed trees, which were abundant on the landscape. Horizontal cover at 5 m (16 ft) alone was the next best performing model (J. Organ, unpubl. data). Dead downed trees were sampled, but did not explain den site selection as well as tip-up mounds and cover at 5 m (16 ft). Lynx essentially select dense cover in a cover-rich area.

In the North Cascades, Washington, lynx denned in mature (older than 250 years) stands with an overstory of Engelmann spruce, subalpine fir and lodgepole pine with an abundance of downed woody debris (Koehler 1990). In this study, all den sites were located on north-northeast aspects (Koehler 1990). In northwest Montana, the immediate areas around dens were in a variety of stand ages but all contained abundant woody debris including downed logs, blowdowns, and rootwads, and dense understory cover (Squires *et al.* 2004b). Information on den site characteristics in Minnesota has not yet been reported (Moen *et al.* 2004).

#### Primary Constituent Elements Summary

The discussion above outlines those physical and biological features essential to the conservation of the lynx and provides a basis for their selection as the primary constituent element for this proposed critical habitat. The primary constituent elements comprise the essential features of boreal forest that (1) Provide adequate prey resources necessary for the persistence of local populations and metapopulations of

lynx through reproduction; (2) act as a possible source of lynx for more peripheral boreal forested areas; (3) enable the maintenance of home ranges; (4) incorporate snow conditions for which lynx are highly specialized that give lynx a competitive advantage over potential competitors; (5) provide denning habitat; and (6) provide habitat connectivity for travel within home ranges, exploratory movements, and dispersal.

#### Criteria Used To Identify Critical Habitat

To identify areas containing features that are essential to the conservation of the lynx, we considered the concepts introduced in the recovery outline for the species (Service 2005) and the above analysis concerning occupancy, evidence of reproduction, connectivity with adjacent lynx populations in Canada and the primary constituent elements. In summary, the area occupied by the lynx in the contiguous United States is broadly delineated by the distribution of the southern extensions of boreal forest, which occur in the Northeast (portions of Maine, New Hampshire, Vermont, New York); the western Great Lakes (portions of Minnesota, Wisconsin, Michigan); the Northern Rocky Mountains/Cascades (portions of Washington, Oregon, Idaho, Montana, northwestern Wyoming, Utah); and the Southern Rocky Mountains (portions of Colorado, southeastern Wyoming) (Agee 2000; McKelvey *et al.* 2000b; Hoving *et al.* 2003). Within this broad distribution the recovery outline (Service 2005) delineated core areas that contain consistent, verified records of lynx over time and evidence of reproduction within the past 20 years. The long-term occupation of these general areas by lynx supports the assumption that they contain habitats sufficient in quality and quantity to continue to sustain lynx populations. An additional factor strongly influencing most of these core areas is their connection with larger lynx populations in Canada. Each proposed critical habitat unit occurs within one of these core areas.

The proposed critical habitat designation does not include all the areas identified in the recovery outline as core areas. This is because the recovery outline did not define areas essential to the conservation of lynx as is necessary for this proposed critical habitat designation. The criteria we used for determining areas essential to the conservation of lynx for the proposed critical habitat were more rigorous than those used for delineating the recovery areas in the lynx recovery

outline; in particular, for critical habitat we focused closely on areas with reliable evidence of lynx occurrence and reproduction since 1995. The recovery outline more broadly encompassed older records of lynx. For example, the core area in the northeastern United States extends from northern Maine into northern New Hampshire because of historic records of lynx in New Hampshire. However, because there is no verified evidence of lynx occupation or reproduction in New Hampshire or western Maine since 1995, the critical habitat unit does not extend into these areas. Furthermore, the preliminary boundaries for the recovery areas were intended to be for representative purposes only so were drawn on a gross scale compared to the proposed critical habitat boundaries. To simplify the mapping of the recovery area boundaries we often used highways or rivers or, as in Minnesota, general maps of average snowfall for the boundaries although we knew that these recovery outline boundaries encompassed habitats that were not boreal forest habitat. In Minnesota, the recovery core area boundary was drawn according to an approximate line where average snow fall was greater than 55 in (140 cm). However, while subsequently evaluating information for the critical habitat proposal, we received bobcat harvest data for Minnesota showing abundant bobcat harvest and reduced lynx presence in the area west of the proposed critical habitat unit in Minnesota, which suggests the western portion of the area preliminarily delineated as core in Minnesota may not be of high quality for lynx. The Montana and north Cascades (Washington) core area boundaries were drawn primarily along highways and rivers that occur below the 4,000 ft (1,219 m) elevation contour, which is below the elevation that supports lynx habitat. As a result, the proposed critical habitat units are subsets of four of the six areas preliminarily delineated as core areas in the lynx recovery outline.

We did not propose critical habitat in two areas the recovery outline defined as core, the Kettle Range in northcentral Washington and the Greater Yellowstone Ecosystem. The Kettle Range historically supported lynx populations (Stinson 2001). However, although boreal forest habitat within the Kettle Range appears of high quality for lynx, there is no evidence that the Kettle Range is currently occupied by a lynx population (G. Koehler, Washington Department of Fish and Wildlife, pers. comm. 2005). In particular, we have no information to suggest a lynx population

has occupied the Kettle area since 1995. Therefore, we did not propose the Kettle Range as critical habitat.

Although lynx currently occupy the Greater Yellowstone Ecosystem (Murphy *et al.* 2004; J. Squires, Rocky Mountain Research Station, unpubl. data; S. Gehman, Wildthings Unlimited, unpubl. data), their presence has been at a lower level compared to areas we are proposing as critical habitat. In the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), we concluded this was because habitat in this area is less capable of supporting snowshoe hares because it is naturally marginal (more patchy and drier forest types) and because the Greater Yellowstone Ecosystem is disjunct from likely source populations. Within Yellowstone National Park, few lynx were detected during recent surveys (Murphy *et al.* 2004) and snowshoe hare densities were very low (Hodges and Mills 2005). Murphy *et al.* (2004) concluded that elevations and slope aspects cause lynx habitat in this area to be naturally highly fragmented, resulting in low lynx densities. Few lynx were documented in the Wyoming Mountain Range in the southern portion of the ecosystem (Squires and Laurion 2000; Squires *et al.* 2001). On study sites on the western edge of the Greater Yellowstone Ecosystem in Idaho, the subalpine fir vegetation series that comprises lynx and snowshoe hare habitat was found only in small, discontinuous patches (McDaniel and McKelvey 2004). In this study area, few stands supported snowshoe hare densities similar to areas known to support lynx (McKelvey and McDaniel 2001). Therefore, because the habitat appears to be of lower quality as indicated by the low numbers of lynx records, we are not proposing to designate critical habitat for lynx within the Greater Yellowstone Ecosystem although it is delineated as a core area in the lynx recovery outline.

The recovery outline identified one area, the Southern Rocky Mountains, as a "provisional core" because of the current uncertainty that ongoing lynx reintroduction efforts will result in a self-sustaining lynx population. Native lynx were functionally extirpated from their historic range in Colorado and southern Wyoming in the Southern Rocky Mountains by the time the lynx was listed in 2000. In 1999, the State of Colorado began an intensive effort to reintroduce lynx. Although it is too early to determine whether the introduction will result in a self-sustaining population, the reintroduced lynx have produced kittens and now are distributed throughout the lynx habitat

in Colorado and southern Wyoming. These animals are not designated as experimental under section 10(j) of the Act. Although Colorado's reintroduction effort is an important step toward the recovery of lynx, we are not proposing to designate critical habitat in the Southern Rockies because of the current uncertainty that a self-sustaining lynx population will become established.

Many areas within the contiguous United States have one or more individual lynx records with no evidence of persistent, reproducing lynx populations. It is possible some of these areas may support undocumented persistent populations of lynx. However, most of these records are likely a result of wide-ranging dispersal events, occur in habitat that is less suitable for lynx than in the core areas, and are mostly disjunct from areas that contain persistent lynx populations. Our recovery outline defines these areas as secondary or peripheral and their role in sustaining persistent lynx populations is unclear; such areas may provide habitat to dispersing lynx, especially when populations are extremely high and some of these animals may eventually settle in areas capable of supporting lynx populations.

Areas delineated as secondary or peripheral in the lynx recovery outline are not included in our proposed critical habitat designation because they support only periodic records of lynx over time and they lack evidence that reproducing lynx populations occupy any of the secondary or peripheral areas. Habitat suitability for lynx has not been assessed throughout the secondary and peripheral areas, but the relative lack of lynx records over time, and, in particular the lack of evidence of reproducing populations, may suggest that habitat, in particular snowshoe hare densities, has not been adequate historically, nor is it currently adequate, to support reproducing lynx populations. Additionally, some of the peripheral areas are naturally disjunct and support few historical records of lynx. If unsuitable habitat conditions are the reason these areas have no record of supporting reproducing lynx populations, then these areas do not support the PCE for lynx.

We propose to designate critical habitat on lands we have determined were occupied at the time of listing, currently support the most abundant, reproducing lynx populations in the contiguous United States, and contains the primary constituent element that is essential to the conservation of the lynx. The focus of our strategy for proposed critical habitat is on boreal forest landscapes of sufficient size to

encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time within each unit. Individual lynx maintain large home ranges; the areas proposed as critical habitat are large enough to encompass multiple home ranges. A secondary consideration is that, in addition to supporting breeding populations, these areas provide connectivity among patches of suitable habitat (*e.g.*, patches containing abundant snowshoe hares), whose locations in the landscape shift through time.

At the scale of the proposed units it was not feasible to completely avoid encompassing waterbodies, including lakes, reservoirs and rivers, and developed areas such as towns (see Proposed Regulation Promulgation section below), or human-made structures such as buildings, airports, paved and gravel roadbeds, active railroad beds, and other structures that lack the PCEs for the lynx. Any such developed areas and the land on which such structures are located, inside proposed critical habitat boundaries, are not considered part of the proposed unit. Therefore, section 7 consultation would not be required for Federal actions that affect only these areas because they would not affect critical habitat or lynx, although any indirect effects of such actions must also be considered when determining whether section 7 consultation is required.

#### **Special Management Considerations or Protection**

As we undertake the process of designating critical habitat for a species, in the geographical area occupied by the lynx at the time of listing we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. We then evaluate those lands to assess whether they, or the features themselves, may require special management considerations or protection. The areas proposed for designation as critical habitat will require some level of management to address the current and future threats to the lynx and to maintain the primary constituent elements essential to the conservation of the species. In all units, special management will be required to ensure that boreal forest landscapes provide a mosaic of forest stands of various ages to provide abundant prey habitat, denning habitat, and connectivity within the landscape.

The designation of critical habitat does not imply that lands outside of



critical habitat do not play an important role in the conservation of the lynx. Federal activities that may affect areas outside of critical habitat, such as forest management, development, and road construction, are still subject to review under section 7 of the Act if they may affect lynx because Federal agencies must consider both effects to lynx and effects to critical habitat independently. The prohibitions of section 9 of the Act (*e.g.*, harm, harass, capture, kill) also continue to apply both inside and outside of designated critical habitat.

#### Proposed Critical Habitat Designation

We are proposing four units as critical habitat for the lynx. These areas occur in northern Maine, northeastern Minnesota, the Northern Rocky Mountains (northwestern Montana/northeastern Idaho), and the Northern Cascades (north-central Washington). The areas are distributed across the known occupied range of the lynx in the contiguous United States, and are necessary to conserve the species. The critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of the lynx and that

require special management considerations or protection. To further understand the location of these proposed areas please see the associated maps found within this proposed rule (also available at our Web site: <http://mountain-prairie.fws.gov/species/mammals/lynx/>).

The four critical habitat units are: (1) Maine unit; (2) Minnesota unit; (3) Northern Rocky Mountains unit (northwestern Montana/northeastern Idaho); and (4) Northern Cascades unit (north-central Washington) (Table 1). Proposed critical habitat by land ownership and State is in Table 2.

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR THE CANADA LYNX

Critical Habitat Unit	Miles <sup>2</sup>	Kilometers <sup>2</sup>
1. Maine .....	10,633	27,539
2. Minnesota .....	3,546	9,183
3. Northern Rocky Mountains (ID/MT)* .....	10,760	27,869
4. Northern Cascades (WA)* .....	1,996	5,169
Total* .....	26,935	69,760

(Note U.S. Forest Service lands in Idaho, Montana, and Washington are not included in this proposal, although their area is reflected in the values in the table (\*).)

TABLE 2.—CRITICAL HABITAT PROPOSED FOR THE CANADA LYNX BY LAND OWNERSHIP AND STATE (MI<sup>2</sup> /KM<sup>2</sup>)

	Federal*	State	Private	Tribal	Other
Idaho .....	0/0	1/3	0/0	0/0	0/0
Maine .....	13/34	758/1,962	9,741/25,230	86/223	35/90
Minnesota .....	440/1,139	1,355/3,510	1,661/4,303	74/192	15/39
Montana .....	*	365/946	1,691/4,381	0/0	63/162
Washington .....	*	164/426	5/13	0/0	0.5/1
Total .....	*	2,643/6,847	13,098/33,927	160/415	114/293

(Note U.S. Forest Service lands in Idaho, Montana, and Washington are not included in this proposal, although their area is reflected in the values in the table (\*).)

We present brief descriptions of each critical habitat unit below.

#### Unit 1: Maine

Unit 1 is located in northern Maine in portions of Aroostook, Franklin, Penobscot, Piscataquis and Somerset Counties. This area was occupied by the lynx at the time of listing and, since that time, lynx have been documented throughout northern Maine. Research in northwestern Maine has documented high productivity of lynx; 91 percent (30 of 33 potential litters) of available adult females (greater than 2 years) produced litters and litters averaged 2.83 kittens (Vashon *et al.* 2005b). This area contains the features essential to the conservation of the lynx as it is comprised of extensive boreal forest supporting the primary constituent element and its components. This area is also important for lynx conservation because it is the only area in the northeastern region of the lynx's range within the contiguous

United States that currently supports breeding lynx populations, and likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the Northeast. Timber harvest and management is the dominant land use within the unit, therefore, special management is required depending on the silvicultural practices conducted (Service 2003). Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, other habitat-related threats to lynx are lack of an International conservation strategy for lynx, traffic and development (Service 2003).

#### Unit 2: Minnesota

Unit 2 is located in northeastern Minnesota in portions of Cook, Koochiching, Lake, and St. Louis Counties. In 2003, when we last formally reviewed the status of the lynx, there were numerous verified records of

lynx from northeastern Minnesota (68 FR 40076, July 3, 2003). Lynx are currently known to be distributed throughout northeastern Minnesota, as has been confirmed through DNA analysis, radio- and GPS-collared animals, and documentation of reproduction (Moen *et al.* 2004; Minnesota DNR 2005; S. Loch, independent scientist, unpubl. data; Minnesota Department of Natural Resources, unpubl. data). This area contains the features essential to the conservation of the lynx as it comprises extensive boreal forest supporting the primary constituent elements. This area is also important for lynx conservation because it is the only area in the Great Lakes region of the lynx's range in the contiguous United States for which we have evidence of recent lynx reproduction, and it likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the Great Lakes region. Timber



harvest and management is a dominant land use (Service 2003). Therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, lack of an international conservation strategy for lynx, fire suppression or fuels treatment, traffic and/or development are other habitat-related threats to lynx (Service 2003).

As described below, the lands (both Superior National Forest and non-USFS lands) encompassed in Lynx Analysis Units (LAUs) mapped by the Superior National Forest and lands the Forest delineated as a Lynx Refugium are not included in this proposed designation because, although important to the conservation of the lynx, the Superior National Forest manages its lands within the LAUs with measures to conserve lynx and takes into consideration habitat conditions for lynx throughout a LAU regardless of land ownership. Therefore, no special management consideration or protection of this area is necessary.

Public Land Survey sections encompassing a mining district in Minnesota known as the Iron Range were not included in the proposed designation because they do not contain the physical and biological features essential to the conservation of lynx. In much of the Iron Range, mining has removed all vegetation and much of this area was subsequently flooded. Areas that are still vegetated and not flooded are extensively fragmented by the mined areas and haul roads. We used the "GAP Land Cover—Tiled Raster" dataset (Minnesota Department of Natural Resources 2002) to identify sections that are heavily influenced by mining activities. Areas described as "Barren" and "Mixed Developed" in the GAP dataset appeared to correspond to areas that were mined or extensively disturbed by mining related activities (service roads, etc.), based on analyses of aerial photos (National Agricultural Imagery Program 2003). Further inspection of the aerial photos indicated that there were additional sections with extensive effects of mining, beyond that indicated by the GAP data, which is based on 10–15 year-old satellite imagery.

#### *Unit 3: Northern Rocky Mountains*

Unit 3 is located in northwestern Montana and a small portion of northeastern Idaho in portions of Boundary County in Idaho and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera,

Powell and Teton Counties in Montana. This area was known to be occupied by lynx at the time of listing. Lynx are currently known to be widely distributed throughout this unit and breeding has been documented in multiple locations (Gehman *et al.* 2004; Squires *et al.* 2004a, 2004b). The Salish Mountains appear to support few recent verified lynx records. However, survey effort in the Salish Mountains has been limited, boreal forest conditions exist, and the Salish Mountains likely provide east-west connectivity between the Purcell Mountains and the Whitefish Mountains. This area contains the features essential to the conservation of the lynx as it is comprised of boreal forest supporting the primary constituent elements. This area is also important for lynx conservation because it appears to support the highest density lynx populations in the Northern Rocky Mountain region of the lynx's range. It likely acts as a source or provides connectivity for other portions of the lynx's range in the Rocky Mountains, particularly the Yellowstone area.

As described below, the Flathead Indian Reservation and Bureau of Land Management (BLM) lands in the Garnet Resource Area, and Federal lands within the Flathead, Helena, Idaho Panhandle, Kootenai, Lewis and Clark, and Lolo National Forests are not included in this proposed designation because, although important to the conservation of the lynx, these lands are sufficiently managed with measures to conserve lynx. Therefore, no special management considerations or protection of these areas is needed.

#### *Unit 4: North Cascades*

Unit 4 is located in north-central Washington in portions of Chelan and Okanogan Counties. This area was known to be occupied at the time lynx was listed. This unit supports the highest densities of lynx in Washington (Stinson 2001). Evidence from limited recent research and DNA shows lynx distributed within this unit, with breeding being documented (von Kienast 2003; K. Aubry, Pacific Northwest Research Station, unpubl. data; B. Maletzke, Washington State University, unpubl. data). Although there appear to be fewer records in the portion of the unit south of Highway 20, few surveys have been conducted in this portion of the unit. This area does support boreal forest habitat and the components essential to the conservation of the lynx. Further, it is contiguous with the portion of the unit north of Highway 20, particularly in winter when deep snows close Highway 20. The northern portion of the unit

adjacent to the Canadian border also appears to support few recent lynx records; however, it is designated wilderness so access to survey this area is difficult. This northern portion supports extensive boreal forest vegetation types and the components essential to the conservation of the lynx. Additionally, lynx populations exist in British Columbia directly north of and likely continuous with this unit (E. Lofrothe, British Columbia Ministry of the Environment, unpubl. data). This area contains the features essential to the conservation of the lynx as it is comprised of extensive boreal forest supporting the primary constituent element and its components. This area is also important for lynx conservation because it is the only area in the Cascades region of the lynx's range that is known to support breeding lynx populations.

The BLM lands in the Spokane District and Federal lands within the Okanogan-Wenatchee National Forest are not included in this proposed designation because, although important to the conservation of the lynx, these lands are sufficiently managed with measures to conserve lynx. Since no special management considerations or protection is needed for lynx, the area does not meet the definition of critical habitat.

### **Effects of Critical Habitat Designation**

#### *Section 7 Consultation*

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. We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

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. 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)). 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 their 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.

Federal activities that may affect the lynx or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers 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), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal 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 may also jeopardize the continued existence of the lynx. Federal activities that when carried out may adversely affect critical habitat for the lynx include, but are not limited to, the following. Note that the scale of these activities would be a

crucial factor in determining whether, in any instance, they would directly or indirectly alter critical habitat to the extent that the value of the critical habitat for the survival and recovery of lynx would be appreciably diminished:

(1) Actions that would reduce or remove understory vegetation within boreal forest stands. Such activities could include, but are not limited to, pre-commercial thinning or fuels treatment of forest stands. These activities could significantly reduce the quality of snowshoe hare habitat such that the landscape's ability to produce adequate densities of snowshoe hares to support persistent lynx populations is at least temporarily diminished.

(2) Actions that would cause permanent loss or conversion of the boreal forest. Such activities could include, but are not limited to, commercial, residential or recreational area developments; certain types of mining activities and associated developments; and road building. Such activities would eliminate and fragment lynx and snowshoe hare habitat.

(3) Actions that would increase traffic volume and speed on roads that divide lynx critical habitat. Such activities could include, but are not limited to, transportation projects to upgrade roads or development of a new tourist destination. These activities could reduce connectivity within the boreal forest landscape for lynx and could result in increased mortality of lynx within the critical habitat units as lynx are highly mobile and frequently cross roads during dispersal, exploratory movements or travel within their home ranges.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Ecological Services Field Office (see list below).

State	Address	Phone No.
Maine .....	1168 Main Street, Old Town, Maine 04468 .....	(207) 827-5938
Minnesota .....	4101 East 80th Street, Bloomington, Minnesota 55425 .....	(612) 725-3548
Montana .....	100 N. Park Ave, Suite 320, Helena, Montana 59601 .....	(406) 449-5225
Idaho and Washington .....	11103 E. Montgomery Drive, Spokane, Washington 99206 .....	(509) 893-8015

We consider each of the proposed critical habitat units to have been occupied by the species at the time we last formally reviewed the status of the species under the Act in 2003 based on surveys and research documenting the presence and reproduction of lynx (68 FR 40076, July 3, 2003). We consider each of these units included in this

proposed designation to contain the physical and biological features essential to the conservation of the lynx (i.e., the primary constituent element).

*Application of Section 3(5)(A) of the Endangered Species Act*

Section 3(5)(A)(i) of the Act defines critical habitat as the specific areas

within the geographical area occupied by the species at the time of listing 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 or protection. Therefore, areas within the geographical area occupied by the species at the time of

listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, those physical and biological features within the geographical area occupied by the species at the time of listing determined to be essential to the conservation of the species that may not require special management or protection also are not, by definition, critical habitat.

In certain cases, we have determined that management plans or programs afford adequate management considerations or protection to essential features, such that the features no longer require special management or protection. We consider a current management program or plan to provide adequate special management or protection if it meets three criteria—(1) The plan is complete and provides special management or protection (i.e., the plan must provide the species' population, or the protection, enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the management and protection strategies 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 management and protection strategies 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).

During development of this critical habitat proposal for the lynx, we first determined which physical and biological features are essential to the species' conservation and delineated the specific areas that contain those features and recent verified records of lynx presence and reproduction. Next, we refined the delineation of the designation to include only those lands that contained essential features that require special management or protection pursuant to the definition of critical habitat in 3(5)(A) of the Act.

During this process, we identified several areas where land management plans have been amended or revised to incorporate the lynx management strategy as outlined in the Lynx Conservation Assessment and Strategy (LCAS) or comparable programs. The USFS, BLM, NPS, and the Service developed the LCAS using the best available science specifically to provide a consistent and effective approach to conserve lynx and lynx habitat on

Federal lands (Ruediger et al. 2000). The overall goals of the LCAS were to recommend lynx conservation measures, to provide a basis for reviewing the adequacy of USFS and BLM land and resource management plans with regard to lynx conservation, and to facilitate conferencing and consultation under section 7 of the Act. The LCAS identifies an inclusive list of 17 potential risk factors for lynx or lynx habitat that may be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. The risks identified in the LCAS are based on effects to either individual lynx, lynx populations, both, or lynx habitat. Potential risk factors the LCAS addresses that may affect lynx productivity include: timber management, wildland fire management, recreation, forest/backcountry roads and trails, livestock grazing, and other human developments. Potential risk factors the LCAS addresses that may affect lynx mortality include: trapping, predator control, incidental or illegal shooting, competition and predation as influenced by human activities and highways. Potential risk factors the LCAS addresses that may affect lynx movement include: highways, railroads and utility corridors, land ownership pattern, and ski areas and large resorts. Other potential large-scale risk factors for lynx addressed by the LCAS include: fragmentation and degradation of lynx refugia, lynx movement and dispersal across shrub-steppe habitats, and habitat degradation by non-native and invasive plant species.

The LCAS ensures the appropriate mosaic of habitat is provided for lynx on Federal lands. Although the LCAS was written specifically for Federal lands, many of the conservation measures are pertinent for non-Federal lands. To facilitate project planning and allow for the assessment of the potential effects of a project on an individual lynx, the LCAS directs Federal land management agencies to delineate Lynx Analysis Units (LAUs) (Ruediger et al. 2000). The scale of an LAU approximates the size of area used by an individual lynx (25 to 50 mi<sup>2</sup> (65 to 130 km<sup>2</sup>)) (Ruediger et al. 2000). The LCAS recognizes that LAUs will likely encompass both lynx habitat and other areas (e.g., lakes, low elevation ponderosa pine (*Pinus ponderosa*) forest, and alpine tundra). Habitat-related standards the LCAS provides to address potential risks include: (1) If more than 30 percent of lynx habitat in an LAU is currently in unsuitable condition, no further

reduction of suitable condition shall occur as a result of vegetation management activities by Federal agencies; (2) within an LAU, maintain denning habitat in patches generally larger than 5 acres, comprising at least 10 percent of lynx habitat; (3) maintain habitat connectivity within and between LAUs; (4) management actions (e.g., timber sales, salvage sales) shall not change more than 15 percent of lynx habitat within an LAU to an unsuitable condition within a 10 year period; (5) pre-commercial thinning will only be allowed when stands no longer provide snowshoe hare habitat; (6) on Federal lands in lynx habitat, allow no net increase in groomed or designated over-the-snow routes and snowmobile play areas by LAU (Ruediger et al. 2000).

With the listing of the lynx in 2000, Federal agencies across the contiguous United States range of the lynx were required to consult with the Service on actions that may affect lynx. The LCAS assists Federal agencies in planning activities and projects in ways that benefit lynx or avoid adverse impacts to lynx or lynx habitat (Ruediger et al. 2000). If projects are designed that fail to meet the standards in the LCAS, the biologists using the LCAS would arrive at an adverse effect determination for lynx.

A Conservation Agreement between the USFS and the Service (U.S. Forest Service and U.S. Fish and Wildlife Service 2000) and a similar Agreement between the BLM and the Service (Bureau of Land Management and U.S. Fish and Wildlife Service 2000) committed the USFS and BLM to use the LCAS in determining the effects of actions on lynx until Forest Plans were amended or revised to adequately conserve lynx. A programmatic biological opinion pursuant to section 7 of the Act analyzed and confirmed the adequacy of the LCAS and its conservation measures to conserve lynx and concluded that Forest and BLM land management plans as implemented in accordance with the Conservation Agreements would not jeopardize the continued existence of lynx (U.S. Fish and Wildlife Service 2000).

In 2005, the USFS and the Service renewed the conservation agreement (U.S. Forest Service and U.S. Fish and Wildlife Service 2005) because the original agreement had expired. In the 2005 agreement, the parties agree to take measures to reduce or eliminate adverse effects or risks to lynx and its occupied habitat pending amendments to Forest Plans. The LCAS is a basis for implementing this agreement (U.S. Forest Service and U.S. Fish and Wildlife Service 2005). The 2005

agreement expires December 31, 2006, unless renewed. The BLM continues to adhere to their original agreement although it expired in December 2004.

Lynx conservation depends on supporting boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time. We have determined that management plans that incorporate the LCAS provide adequate management or protection for lynx because they meet the three criteria identified above. Specifically—(1) The management plans have been finalized and incorporate the provisions of the LCAS, which provides the best scientifically-based conservation measures known for lynx at this time; at a minimum, the incorporation of the LCAS conservation measures to address risk factors affecting lynx productivity into a management plan provides adequate management and protection for lynx and features essential to the conservation of lynx; (2) where Federal agencies and non-Federal entities (including Tribes) have amended or revised their management plans to incorporate provisions of the LCAS, these provisions become the management direction for that particular land base; conservation measures in the LCAS are designed to be implemented at the programmatic and project level scale; and (3) the land management entities have incorporated provisions of the LCAS in order to provide for the conservation of the lynx; the conservation measures in the LCAS are intended to conserve lynx and to reduce or eliminate adverse effects from the spectrum of management activities on Federal lands (or other lands where the conservation measures are applied), at this time, there is no other scientifically-based land management guidance available for lynx; these management plans are in effect until future plan revisions or plan amendments supercede the current plans.

We evaluated areas to determine if they meet the definition of critical habitat by (1) containing features essential to the conservation of the lynx, and (2) if the essential features may require special management or protection. We determined that these lands did contain features essential to the conservation of the lynx. However, based on the provisions in the LCAS beneficial to the lynx, we determined that the features on lands covered by management programs or plans that have been revised or amended to adopt the LCAS do not require special management or protection and,

therefore, these lands do not meet the definition of critical habitat pursuant to section 3(5)(A) of the Act. These lands, described below, are not included in the proposed designation:

#### **Superior National Forest**

The Superior National Forest located in northeastern Minnesota has revised its Land and Resource Management Plan (LRMP) to include specific measures to conserve lynx, based on the LCAS (Ruediger et al. 2000; USFS 2004a, b; Service 2004). Much of the boreal forest habitat in northeastern Minnesota is found on Superior National Forest (Service 2004), and a large proportion of the recent lynx records in Minnesota have been detected on the Superior National Forest (Moen et al. 2004; Minnesota DNR 2005). The revised LRMP went through stakeholder meetings, section 7 consultation with the Service, and public review. The LRMP will guide day-to-day management decisions for the next 15 years, whereupon the LRMP will again undergo revision. (USFS 2004a).

The Superior LRMP adopted the standards, guidelines, and objectives of the LCAS (Ruediger et al. 2000; K. McAllister, in litt. 2002) that the USFS determined were appropriate and relevant to lynx conservation in Minnesota, in consultation with the Service. To remove redundancies with other management direction, the LRMP excluded certain LCAS standards, guidelines, and objectives and reclassified some to increase their potential to benefit lynx, to avoid confusion with terms found elsewhere in the LRMP, and to allow for management flexibility that would not compromise lynx conservation. In addition, it designated the Boundary Waters Canoe and Wilderness Area as a Lynx Refugium, in which natural processes will be the predominant determinant of lynx habitat conditions with some active management that would be “compatible with wilderness values” (USFS 2004a).

The Superior National Forest has delineated Lynx Analysis Units (LAUs) within which it applies the lynx conservation measures prescribed in the LRMP. The LAUs are the smallest landscape scale analysis units upon which direct, indirect, and cumulative effects analyses for lynx will be performed (Ruediger et al. 2000; USFS 2004a). They encompass lynx habitat (on all ownerships) within the administrative unit that has been mapped (in coordination with adjacent management agencies and the Service) using specific criteria to identify appropriate vegetation and

environmental conditions (U.S. Forest Service 2004a).

Within the proclamation boundaries of the Superior National Forest are numerous inholdings of non-USFS land (e.g., lands owned by State of Minnesota, private companies, etc.). The Superior National Forest may only control management on National Forest lands, but the LRMP's objectives, standards, and guidelines ensure that National Forest actions may be restricted based on the condition of non-USFS lands in LAUs. For example, if greater than 30 percent of lynx habitat within an LAU is in an unsuitable condition (e.g., very recent clearcuts), Superior National Forest would not take any action to further increase the extent of unsuitable habitat, even if all of the unsuitable habitat were on non-USFS lands. Therefore, the LRMP is able to affect the general condition of lynx habitat within LAUs, even where the LAUs contain lands that are not owned or directly controlled by the USFS. However, most of the land within the LAUs is under USFS management.

On the basis of the conservation benefits afforded the lynx from the measures in the approved, revised LRMP and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included those lands (both Superior National Forest and non-USFS lands within the proclamation boundary) encompassed in LAUs mapped by the Superior National Forest or delineated by the Forest as a Lynx Refugium in this proposed designation because we have determined that special management or protection of these lands and the features essential to the conservation of the lynx is not required. Although important to the conservation of the lynx, the Superior National Forest manages its lands within the LAUs with measures to conserve lynx and takes into consideration habitat conditions for lynx throughout a LAU regardless of land ownership.

#### **Garnet Resource Area, Bureau of Land Management**

The BLM's Garnet Resource Management plan has been amended to incorporate all provisions of the LCAS (State Director, BLM, in litt. 2004; R.M. Wilson, in litt. 2004). The Garnet Resource Area supports blocks of boreal forest that currently support lynx populations on the southern edge of the Northern Rockies Unit. The amendment went through public review and consultation with us under section 7 of the Act; a finding of no significant impact was issued by BLM in 2004

(R.M. Wilson, in litt. 2004; State Director, BLM, in litt. 2004).

On the basis of the conservation benefits afforded the lynx from the measures in the amended Garnet Resource Management Plan and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included those lands that are within the boundaries of the approved Garnet Resource Management Plan in this proposed designation of critical habitat for the lynx. These lands, and features there on, are being adequately managed for lynx and, as a result, do not meet the definition of critical habitat. Because the BLM already manages these lands, and features there on, consistent with lynx conservation, we have determined that no special management or protection pursuant to section 3(5)(A) is required.

#### Flathead Indian Reservation

The tribal lands in the Northern Rockies unit (portions of the Flathead Indian Reservation) are managed by the Confederated Salish and Kootenai Tribes (CSKT) under their Forest Management Plan that incorporates the provisions of the LCAS (CSKT 2000). On the basis of the conservation benefits afforded the lynx from the measures in the CSKT's Forest Management Plan and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included lands that are within the boundaries of the Flathead Indian Reservation in this proposed designation of critical habitat for the lynx. These lands, and features there on, are being adequately managed for lynx and, as a result, do not meet the definition of critical habitat. Because the Tribes already manage these lands, and features there on, consistent with lynx conservation, no special management or protection pursuant to section 3(5)(A) is required.

#### Spokane District, Bureau of Land Management

Small portions of lands administered by the BLM's Spokane District are encompassed in the proposed boundaries delineated as proposed lynx critical habitat in the North Cascades

unit in Washington. These lands support boreal forest habitat but only occur in extremely small areas within the proposed critical habitat boundary. The BLM Spokane District Resource Management Plan was modified in 2003 to incorporate all of the provisions of the LCAS through what is called "Resource Management Plan Maintenance" (BLM. 2003).

On the basis of the conservation benefits afforded the lynx from the measures in the approved Spokane District Resource Management Plan Maintenance and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included those lands that are within the boundaries of the BLM's Spokane District Resource Management Plan in this proposed designation of critical habitat for the lynx. The BLM already manages this area, and features there on, consistent with lynx conservation; therefore, special management or protection pursuant to 3(5)(A) is not required.

In summary, we find that including these lands addressed in management plans protect essential lynx features and habitat within their boundaries and provide appropriate management to provide for the conservation of lynx and features essential to its conservation over the life of the amendments, revisions or modifications. The management plans have been finalized and incorporate the provisions of the LCAS, which, as described above provides the best, scientifically-based conservation measures for lynx known at this time. Federal land and resource management plans provide the overarching direction under which Federal lands are managed until future plan revisions or plan amendments supercede the current plans. The Flathead Indian Reservation's Forest Management Plan guides forest management on the Reservation lands (CSKT 2000). The conservation measures in the LCAS are intended to conserve lynx and to reduce or eliminate adverse effects from the spectrum of management activities on

Federal lands (or other lands where the conservation measures are applied); at this time, there is no other scientifically-based land management guidance available for lynx. Not including areas in the proposed designation that are already being managed for lynx conservation encourages land managers to proactively institute lynx conservation measures and reduces administrative effort and costs associated with engaging in consultations for critical habitat pursuant to section 7 of the Act.

Maps included with this proposal illustrate lands essential to the conservation of the lynx and that may require special management considerations or protection and delineated as proposed critical habitat. More detailed maps show lands determined to be essential to the conservation of the species, which are color coded to clearly show those lands proposed and those not included in this proposal, are available from the Montana Ecological Services Office (see **ADDRESSES** section) or from the Internet at <http://mountain-prairie.fws.gov/species/mammals/lynx/>.

#### National Forest Service Lands Within Idaho, Montana, and Washington

Seven National Forests are currently covered by the May 2005 Canada Lynx Conservation Agreement are in the process of revising or amending their LRMPs to provide measures for lynx conservation under the LCAS. It is anticipated that all of these plans will be complete prior to promulgation of the final critical habitat designation. As a result, all Federal lands within the seven National Forests have conservation measures or protection for lynx and habitat features essential to the conservation of the lynx. Therefore, Federal lands within these seven National Forests do not meet the definition of critical habitat pursuant to section 3(5)(A) of the Act and thus we are proposing that those areas not be included in the final critical habitat designation. The specific National Forests are presented in Table 3.

TABLE 3.—NATIONAL FORESTS COVERED BY THE CANADA LYNX CONSERVATION AGREEMENT

Critical Habitat Unit	
North Cascades .....	Okanogan—Wenatchee National Forest.
Northern Rocky Mountains .....	Flathead National Forest.
	Helena National Forest.
	Idaho Panhandle National Forests.
	Kootenai National Forest.
	Lewis and Clark National Forest.
	Lolo National Forest.
Minnesota .....	None.

TABLE 3.—NATIONAL FORESTS COVERED BY THE CANADA LYNX CONSERVATION AGREEMENT—Continued

Critical Habitat Unit	
Maine .....	None.

#### *Application of Exclusions Under Section 4(b)(2) of the Act*

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, impact on national security, 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.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We have determined that no lands being proposed as critical habitat for the lynx are owned or managed by the Department of Defense, and there are

currently no Habitat Conservation Plans (HCPs) for the lynx in the areas we are proposing as critical habitat. We anticipate no impact to national security, partnerships, or HCPs from this critical habitat designation.

In a previous section of this rule, we described how lands that had management plans containing adequate management and protection measures for lynx and features essential to its conservation were not included in the proposed critical habitat designation. Several managed areas included in this proposal have habitat with features essential to the conservation of the lynx, but are in the process of amending or revising their management plans to incorporate the LCAS or similar management. These lands could include State lands, Bureau of Land Management lands and National Parks. We may consider areas for exclusion from the final designation of critical habitat, based upon further analysis and public comment, if, prior to the final

critical habitat designation, these lands are covered by final management plans that incorporate conservation measures for the lynx (*i.e.*, the LCAS (Ruediger *et al.* 2000) or comparable).

Additionally, we are evaluating the adequacy of existing management plans to conserve lynx on lands designated as wilderness areas or National Parks. Generally, designated wilderness areas are managed to protect their wilderness character and motorized equipment is prohibited. Under the The National Park Service Organic Act of 1916, as amended, the mission of the National Park Service is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by which means as will leave them unimpaired for the enjoyment of future generations. The specific wilderness areas and National Parks under evaluation are presented in Table 4.

TABLE 4.—WILDERNESS AREAS OR NATIONAL PARKS FOR WHICH MANAGEMENT PLANS WILL BE EVALUATED TO DETERMINE THEIR ADEQUACY FOR CONSERVING LYNX

Critical Habitat Unit	Wilderness Area or National Park
Maine .....	None.
Minnesota .....	Voyageurs National Park.
Northern Rocky Mountains .....	Glacier National Park.
	Hoodoo Mountain Wilderness Study Area.
	Wales Creek Wildernesses Study Area.
North Cascades .....	Glacier Peak Wilderness.
	North Cascades National Park.
	Pasayten Wilderness.
	Stephen P. Mather Wilderness.

#### **Relationship of Critical Habitat to Tribal Lands**

In accordance with Secretarial Order 3206, “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997); the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951); Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments;” and the relevant provision of the Departmental Manual of the Department of the Interior

(512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. We believe that conservation of lynx can be achieved off of tribal lands

within the critical habitat units or with the cooperation of Tribes.

The amount of tribal lands in the Maine and Minnesota units are relatively small (approximately 86 and 74 mi<sup>2</sup>, respectively [223 and 192 km<sup>2</sup>]) (Table 5). There are no tribal lands in the North Cascades unit. Therefore, the tribal lands in Maine and Minnesota are being considered for removal from final designation as critical habitat pursuant to section 4(b)(2) of the Act. The Service requests comments from Tribes regarding critical habitat that is being proposed on their lands.

TABLE 5.—TRIBAL LANDS UNDER CONSIDERATION FOR REMOVAL FROM FINAL DESIGNATION AS CRITICAL HABITAT

Critical Habitat Unit	Tribal Entity
Maine .....	Houlton Band of Maliseet Indians. Aroostook Band of Micmac Indians. Passamaquoddy Tribe. Penobscot Indian Nation.
Minnesota .....	Grand Portage Indian Reservation. Vermillion Lake Indian Reservation.
Northern Rocky Mountains .....	None.
North Cascades .....	None.

### Economic Analysis

An analysis of the potential economic impacts of proposing critical habitat for the lynx 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://mountain-prairie.fws.gov/species/mammals/lynx/> or by contacting the Montana Field 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

We have scheduled public hearings on this proposal. Dates, times, and locations of those hearings are listed in the **SUPPLEMENTARY INFORMATION** section, above.

### 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 [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

### Required Determinations

#### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. 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. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630 “Governmental Actions and Interference with Constitutionally Protected Property Rights.”

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17,

2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Within the specific areas identified in this proposal, the types of Federal actions or authorized activities that we have identified as potential concerns are listed in the **SECTION 7 CONSULTATION** section above. 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. When it is prepared, the draft economic analysis will be available from the Internet at <http://mountain-prairie.fws.gov/species/mammals/lynx/> or by contacting the Montana Ecological Services Office directly (see **ADDRESSES** section).

#### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared

pursuant to section 4(b)(2) of the Act and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn. v. U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (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 Regulatory Flexibility Act (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 60 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 (Number 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 the lynx is considered a significant regulatory action under Executive Order 12866 as it may raise novel legal and policy issues. However, this designation 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. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), 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 that receive Federal funding, assistance, or permits, or that 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, because towns and developed areas are excluded from designation. As such, we do not believe that a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Idaho, Maine, Minnesota, Montana, Washington, and Wyoming. We believe that the designation of critical habitat for the lynx will have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas important to the conservation of the species are more clearly defined, and the primary constituent element of the habitat essential to the survival and conservation of the species is



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 element within the designated areas to assist the public in understanding the habitat needs of the lynx.

#### 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 of 1973, as amended. 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 the lynx, 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.

#### 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 "Consultation and Coordination with Indian Tribal Governments," and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. Tribal lands in the Maine and Minnesota units are included in this proposed designation; however, these tribal lands are being considered for removal from final designation as critical habitat. The Service requested information from

Tribes for this proposed rule and has made potentially affected Tribes aware of this proposed rule.

#### References Cited

A complete list of all references cited in this rulemaking is available on the Web site <http://mountain-prairie.fws.gov/species/mammals/lynx/> or upon request from the Field Supervisor, Montana Field Office (see **ADDRESSES**).

#### Author(s)

The primary author of this package is the U. S. Fish and Wildlife Service.

#### 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 § 17.11(h), revise the entry for "Lynx, Canada" under "MAMMALS" to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Lynx, Canada .....	<i>Lynx canadensis</i> .....	U.S.A. (AK, CO, ID, ME, MI, MN, MT, NH, NY, OR, PA, UT, VT, WA, WI, WY), Canada, circumboreal.	CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY.	T	692	17.95(a)	17.40(k)
*	*	*	*	*	*		*

3. In § 17.95(a), add critical habitat for "Canada lynx" in the same alphabetical order as this species occurs in § 17.11(h) to read as follows:

#### § 17.95 Critical habitat—fish and wildlife.

##### (a) Mammals.

\* \* \* \* \*

Canada lynx (*Lynx canadensis*)  
 (1) Critical habitat units are depicted on the maps below for the following States and counties:  
 (i) Idaho: Boundary County;  
 (ii) Maine: Aroostook, Franklin, Penobscot, Piscataquis and Somerset counties;

(iii) Minnesota: Cook, Koochiching, Lake, and St. Louis counties;

(iv) Montana: Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton counties; and

(v) Washington: Chelan and Okanogan counties.

(2) Within these areas, the primary constituent elements for the Canada lynx are boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(i) Presence of snowshoe hares and their preferred habitat conditions, which includes dense understories of young trees or shrubs tall enough to protrude above the snow; and

(ii) Winter snow conditions that are generally deep and fluffy for extended periods of time; and

(iii) Sites for denning having abundant coarse woody debris, such as downed trees and root wads.

(3) Critical habitat does not include waterbodies, including lakes, reservoirs or rivers, or human-made structures existing on the effective date of this rule, such as buildings, airports, paved and gravel roadbeds, active railroad beds and the land on which such structures are located. Critical habitat does not include Federal lands within the Okanogam-Wenatchee, Flathead, Helena, Idaho Panhandle, Kootenai, Lewis and Clark, and Lolo National Forests. Critical habitat does not include the following towns:

(i) *Idaho*: None.

(ii) *Maine*: Allagash, Ashland, Attean (historical), Attean Landing, Back Settlement, Batesville, Blackstone, Blackwater, Blair, Boat Landing Camp, Bradbury, Brassua, Buffalo, Burnt Landing, Burnt Mill, Chapman, Chesuncook, Clayton Lake, Daaquam, Deadmans Corner, Dennistown, Dickey, Dudley, Dyerville, Eagle Lake, Estcourt,

Frenchville, Grassy Landing, Greenlaw Crossing, Grindstone, Griswold, Hawkins, Hay Brook, High Landing, Hillman, Holeb, Howe Brook, Huson Landing, Jackman, Jackman Mill (historical), Jones Mill, Jones Mill, Keough, Knowles Corner, Kokadjo, La Croix Depot, Lac Frontiere, Lake Parlin (historical), Little Canada, Long Pond, Lowelltown, Mackamp, Masardis, McCarty, McKeen Crossing, McNally, Moose River, Moosehead, Moosehorn Crossing, Morey Brow, New City, Nixon, North East Carry, Ogontz, Old City, Oxbow, Perkins, Pine Knoll, Plaisted, Plourde Mill, Poplar Ripples, Portage, Pride, Quimby, Rand Landing, Rockwood, Round Mountain, Russell Crossing, Saint Francis, Saint John, Sheridan, Shorey, Skerry, Skinner, Smyrna Center, Soldier Pond, Somerset Junction, Squa Pan, Stephensons Landing, Tarratine, The Crossing, Walker, Three Streams, Wallagrass, Weeksboro, Wheelock, Wheelock Mill, Winterville.

(iii) *Minnesota*: Alger, Allen, Angora, Arnold, Aurora, Babbitt, Baptism Crossing, Bartlett, Beaver Bay, Beaver Crossing, Belgrade, Bell Harbor, Biwabik, Brimson, Breda, Britt, Burntside, Burntside Lake, Buyck, Canyon, Castle Danger, Chippewa City, Clappers, Clifton, Cook, Cotton, Covill, Cramer, Crane Lake, Croftville, Cusson, Darby Junction, Duluth, Duluth Heights, Eagles Nest, East Beaver Bay, Ely, Embarrass, Fairbanks, Falls Junction, Finland, Forest Center, Forsman, Four Corners, Fredenberg, French River,

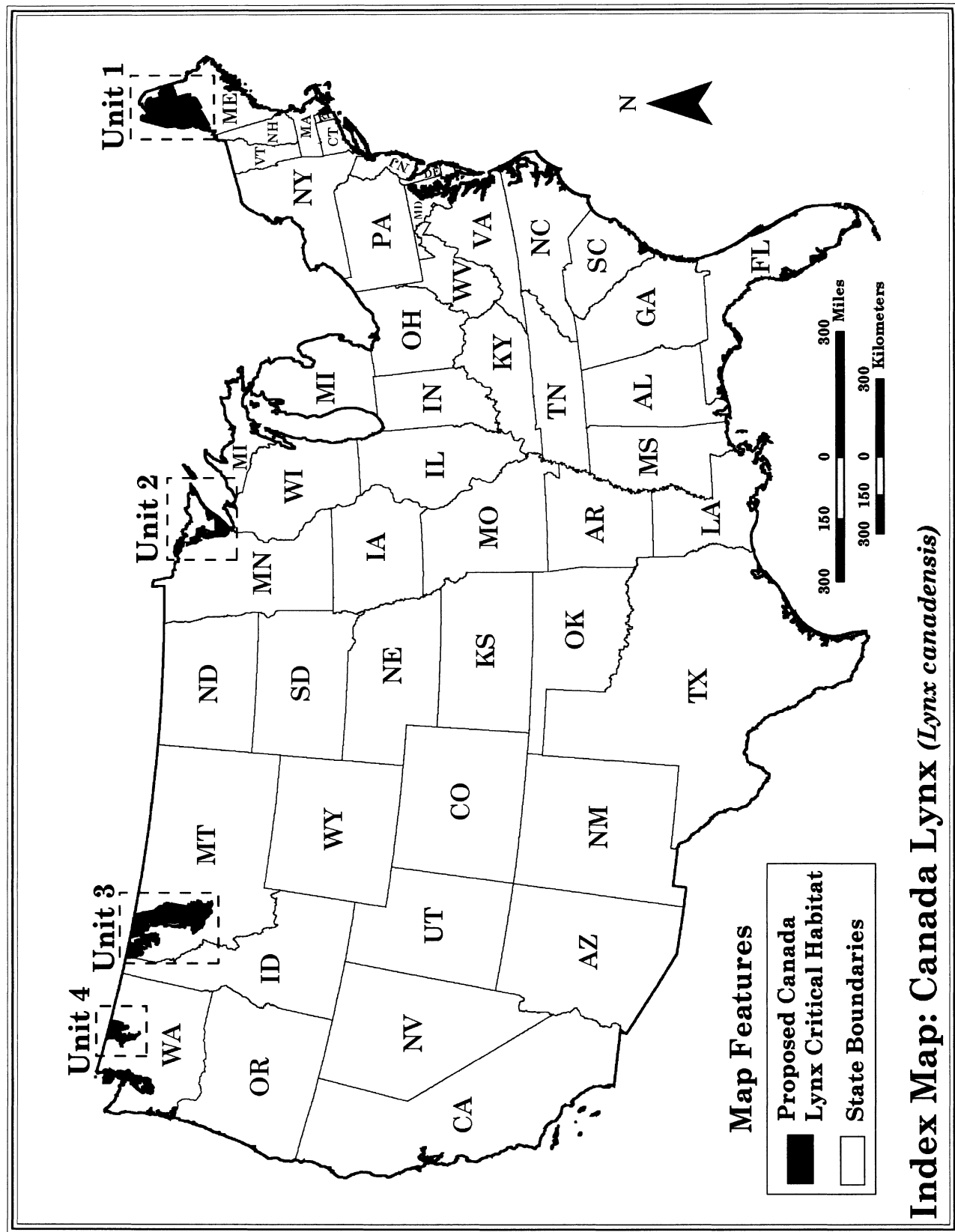
Gappas Landing Campground, Genoa, Gheen, Gheen Corner, Gilbert, Glendale, Grand Portage, Grand Marais, Greenwood Junction, Haley, Happy Wanderer, Highland, Hornby, Hovland, Hunters Park, Idington, Illgen City, Isabella, Island View, Jameson, Jay See Landing, Jordan, Kabetogama, Kelly Landing, Kettle Falls, Knife River, Lakewood, Larsmont, Lauren, Lax Lake, Leander, Lester Park, Little Marais, Little Marais Postoffice, London, Makinen, Lutsen, Manitou Junction, Maple, Maple Hill, Markham, Martin Landing, McComber, McNair, Melrude, Midway, Murphy City, Murray, Norshor Junction, Orr, Palmers, Palo, Peyla, Pigeon River, Pineville, Prairie Portage, Ranier, Red Rock, Reno, Robinson, Rollins, Rothman, Salo Corner, Sawbill Landing, Schroeder, Scott Junction, Section Thirty, Sha-Sha Resort, Shaw, Silver Bay, Silver Creek, Silver Rapids, Skibo, Soudan, South International Falls, Sparta, Spring Lodge Resort and Marina, Stewart, Taconite Harbor, Taft, Thunderbird Resort, Tofte, Toimi, Tower, Tower Junction, Two Harbors, Wahlsten, Wakemup, Waldo, Wales, Wheeler Landing, White Iron, Whiteface, Whyte, Winter, Winton, Woodland, York.

(iv) *Montana*: Avon, Elliston, Garrison, Helmsville, Lincoln, Ovando, Seeley Lake, Summit, Woodworth.

(v) *Washington*: None.

(4) **Note:** Index map for lynx critical habitat follows:

**BILLING CODE 4310-55-P**



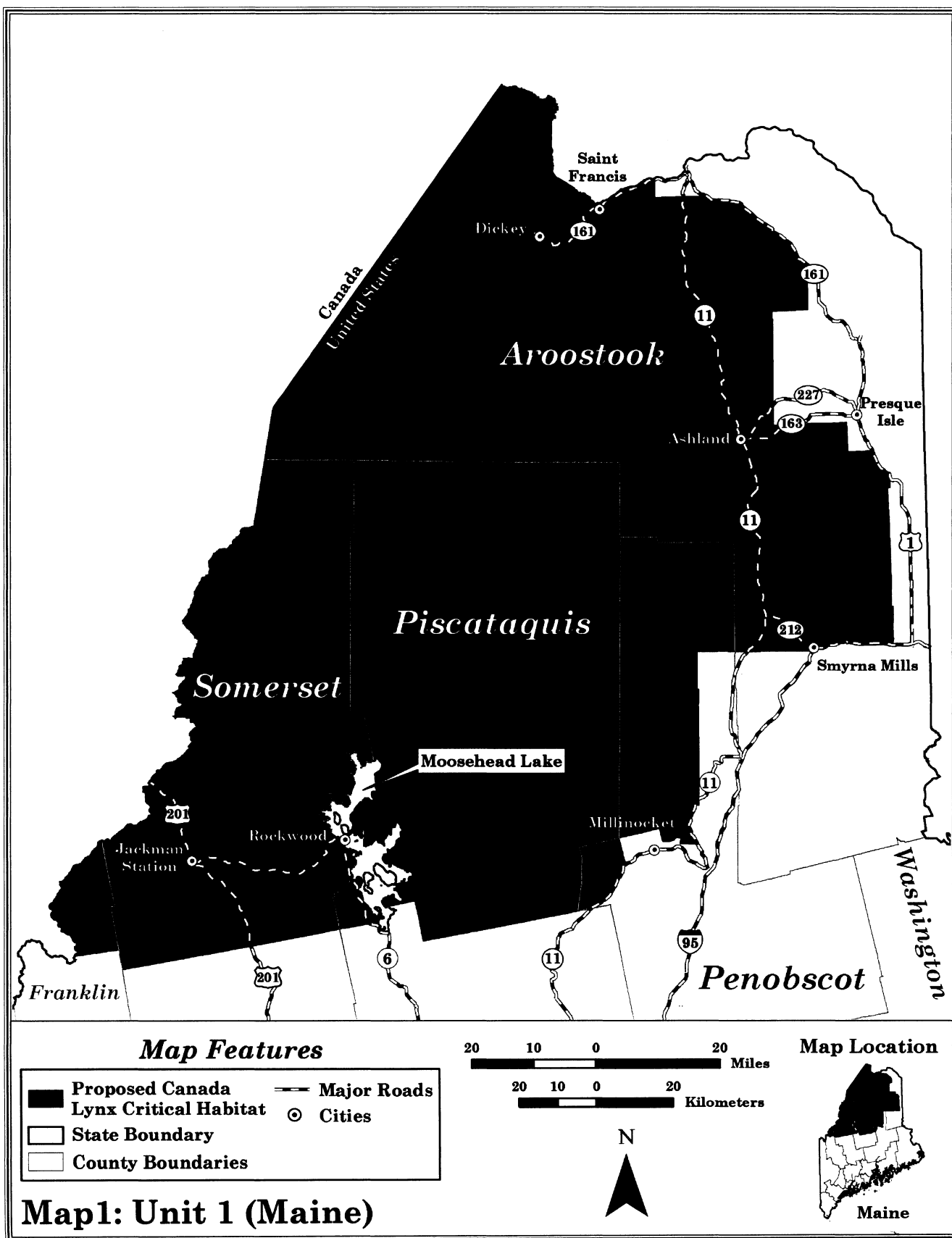
(5) Unit 1: Maine Unit; Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties, Maine.

(i) Coordinate projection: UTM, NAD83, Zone 19, Meters. Coordinate definition: (easting, northing). Starting at Maine/Canada Border (SW corner of Merrill Strip Twp.) (371910, 5028021), follow township boundary east to SE corner of Skinner Twp. (383434, 5029673). Follow township boundary SE to SW corner of T5 R6 Twp. (383438, 5029673). Follow township boundaries NE to boundary of Moosehead Lake (450963, 5036788). Follow Moosehead Lake boundary to intersection with Beaver Cove Twp. (452704, 5040915). Follow township boundary to Moosehead Lake boundary (453125, 5040999). Follow Moosehead Lake boundary to township boundary (453705, 5041123). Follow township boundary to NW corner of Bowdoin College Grant West Twp. (460415, 5042546). Follow township boundary to SW corner of township (462537, 5032002). Follow township boundaries

to intersection with State Highway 11 in Long A Twp. (506181, 5040542). Follow State Highway 11 NE to intersection with T4 Indian Purchase Twp. boundary (515204, 5052175). Follow township boundary NW to SW corner of T1 R8 Twp. (513460, 5059043). Follow township boundary NE to intersection with Grindstone Twp. boundary (523967, 5061550). Follow township boundary south and east to intersection with State Highway 11 (533826, 5057404). Follow State Highway 11 north to intersection with Soldiertown Twp. boundary (533178, 5067644). Follow township boundary east to SE corner of township (534261, 5067639), then follow township boundaries north to SE corner of T6 R7 Twp. (533735, 5108030). Follow township boundaries east to intersection with U.S. Highway 2 (563731, 5108104). Follow U.S. Highway 2 to intersection with New Limerick Twp. boundary (584664, 5109885). Follow township boundaries north to intersection with U.S. Highway 1 (583834, 5153895). Follow U.S.

Highway 1 NW to intersection with Westfield Twp. boundary (579218, 5160782). Follow township boundary west to intersection with Chapman Twp. boundary (572903, 5160530). Follow township boundary north to NE corner of township (572577, 5168198). Follow township boundaries west to intersection with Ashland Twp. boundary (553502, 5167377). Follow township boundaries north to SW corner of Westmanland Twp. (553279, 5197228). Follow township boundary east to SE corner of township (562523, 5197586). Follow township boundaries north to intersection with State Highway 161 (562361, 5209395). Follow State Highway 161 NE to New Canada Twp. boundary (536315, 5227346). Follow township boundaries west to NW corner of Wallagrass Twp. (522883, 5227037). Follow township boundaries north to Maine/Canada border (522876, 5231986). Follow Maine/Canada border to beginning.

(ii) **Note:** Map 1 of Unit 1 (Maine) follows:



(6) Unit 2: Minnesota Unit; Cook, Koochiching, Lake, and St. Louis Counties, Minnesota.

(i) Unit 2 is divided into seven subunits to facilitate description. In addition, because the boundaries of several subunits are defined in part by the Lynx Analysis Units (LAUs) of Superior National Forest, and those subunits are very complex, in some cases we approximated those boundaries using public land survey lines for ease in description and public utility except where the LAUs already followed recognizable features.

(ii) *Subunit 1.* Beginning where the United States and Canadian boundaries intersect with the west side of Section 31, Township 68 North, Range 16 West in Sand Point Lake, then proceeding along the west side of said section to landfall along said lake; thence westerly along the shoreline of Sand Point Lake to where it becomes the east shore of King Williams Narrows in Section 1, Township 67 North, Range 17 West; thence southerly along King Williams Narrows to a point defined by UTM coordinates 539818, 5350111 ( NAD 1983, Zone 15 North); thence westerly to first landfall in Section 12, Township 67 North, Range 17 West; thence proceeding westerly along the shore of Crane Lake to a point defined by UTM coordinates 536693, 5350743 ( NAD 1983, Zone 15 North); from said point westerly to the southwest corner of Section 3, Township 67 North, Range 17 West; thence along the west boundary of said section to the southeast corner of Section 33, Township 68 North, Range 17 West; thence along the south boundary of said section and Section 32, Township 68 North, Range 17 West to the shore of Johnson Lake in Section 31, Township 68 North, Range 17 West; thence northwesterly along the shore of Johnson Lake to where it meets the Spring Lake drainage in Section 23, Township 68 North, Range 18 West; thence northwesterly along said drainage to the shoreline of Spring Lake; thence along the shoreline of Spring Lake to its intersection with the east boundary of Section 15, Township 68 North, Range 18 West; thence north along the east boundary of said section to the southeast corner of Section 10, Township 68 North, Range 18 West; thence west along the south boundary of said section and of Sections 7, 8, and 9, Township 68 North, Range 18 West to the southeast corner of Section 12, Township 68 North, Range 19 West; thence along the east boundaries of Sections 13, 24, 25, and 36, Township 68 North, Range 19 West and Sections 1 and 13, Township 67 North, Range 19 West to the southeast corner of Section

13, Township 67 North, Range 19 West; thence along the south boundaries of Sections 2 and 3, Township 67 North, Range 19 West; thence proceeding along the east, south, and west boundaries of Section 9, Township 67 North, Range 19 West; thence along the south and west boundaries of Section 5, Township 67 North, Range 19 West; thence along the north boundary of Section 6, Township 67 North, Range 19 West, and Sections 1–6, Township 67 North, Range 20 West to the intersection of the north boundary of Section 6, T67 North, Range 20 West and United States Highway 53; thence northerly along United States Highway 53 to the United States and Canadian boundaries; thence easterly along the Canadian Border to the point of beginning in Sand Point Lake.

(iii) *Subunit 2.* Beginning at the northeast corner of Section 35, Township 67 North, Range 19 West, proceeding south along the east boundary of said Section and of Sections 2, 11, 14, 23, 26, and Section 35, Township 66 North, Range 19 West to the southeast corner of Section 35, Township 66 North, Range 19 West; thence along the south boundary of said Section of Sections 34, 33, 32, and 31, Township 66 North, Range 19 West to the southeast corner of Section 36, Township 66 North, Range 20 West; thence south along the east boundaries of Sections 1, 12, and 13, Township 65 North, Range 20 West to the point at which the east boundary of Section 13, Township 65 North, Range 20 West intersects with United States Highway 53; thence northwesterly along United States Highway 53 to its intersection with the north boundary of Section 5, Township 66 North, Range 20 West; thence east along the north boundary of said Section and of Sections 4, 3, 2, 1, Township 66 North, Range 20 West and of Sections 6 and 5, Township 66 North, Range 10 West to the northeast corner of Section 5, Township 66 North, Range 19 West; thence south along the east boundary of said Section to the northeast corner of Section 8, Township 66 North, Range 19, West; thence east along the north boundary of Section 9, Township 66 North, Range 19 West; thence north along the east boundary of Section 3, Township 66 North, Range 19 West; thence east along the north boundary of said Section; thence along the east and north boundaries of Section 35, Township 67 North, Range 19 West to the point of beginning at the northeast corner of said Section.

(iv) *Subunit 3.* Beginning at the northeast corner of Section 15, Township 63 North, Range 12 West proceeding south along the east boundary of said Section; thence

proceeding along the north boundaries of Sections 23 and 24, Township 63 North, Range 12 West and Section 19, Township 63 North, Range 11 West; thence south along the east boundary of said Section; thence east along the north boundary of Section 29, Township 63, Range 11 West and south along the east boundary of said Section and of Section 32, Township 63, Range 11 West; thence along the south boundary of said Section and of Section 31, Township 63 North, Range 11 West; thence south along the east boundary of Section 1, Township 62 North, Range 12 West; thence west along the south boundary of said Section; thence south along the east boundary of Section 11, Township 62 North, Range 12 West; thence along the south boundary of said Section and of Section 10 of said Township; thence proceeding north along the west boundary of said Section; thence west along the south boundaries of Sections 4, 5, and 6, Township 62 North, Range 12 West and of Sections 1 and 2, Township 62 North, Range 13 West; thence north along west boundary of Section 2, Township 62 North, Range 13 West; thence along the south boundary of Section 34, Township 63 North, Range 13 West; thence north along the west boundary of said Section and of Sections 27 and 22 of said Township; thence along the north boundaries of Sections 22 and 23, Township 63 North, Range 13 West; thence north along the west boundary of Section 13, Township 63 North, Range 13 West; thence along the north boundaries of said Section and of Sections 18, 17, 16, and 15, Township 63 North, Range 12 West point of beginning at the northeast corner of section 15 of said Township.

(v) *Subunit 4.* Sections 29 and 31, Township 60 North, Range 12 West and Section 36, Township 60 North, Range 13 West.

(vi) *Subunit 5.* Sections 7, 18, 19, Township 59 North, Range 13 West and Sections 24–26, Township 59 North, Range 14 West.

(vii) *Subunit 6.* Section 18, Township 58 North, Range 17 West.

(viii) *Subunit 7.* Beginning at the northeast corner of Section 15, Township 65 North, Range 17 West proceeding south along the east boundary of said Section and of Section 22 of said Township; thence along the north boundary of Section 26, Township 65 North, Range 17 West and along the east boundary of said Section and of Section 35 of said Township; thence along the north boundary of Section 2, Township 64 North, Range 17 West; thence south along the east boundary of said Section and of Section 11 of said Township; thence along the north

boundary of Section 13, Township 64 North, Range 17 West; thence south along the east boundaries of said Section and of Sections 24, 25, and 35 of said Township and of Sections 1 and 12 of Township 63 North, Range 17 West; thence east along the north boundary of Section 18, Township 63 North, Range 16 West; thence south along the east boundary of said Section; thence along the north boundaries of Section 20 and 21, Township 63 North, Range 16 West; thence along the east boundary of Section 27, Township 63 North, Range 16 West and along the north boundary of Section 27, Township 63 North, Range 16 West; thence along the west, north and east boundaries of Section 23, Township 63 North, Range 16 West; thence along the north boundaries of Sections 25 and 30 of said Township; thence along the east boundary of Section 30 of said Township; thence along the north boundaries of Sections 32–36, Township 63 North, Range 15 West and of Sections 31–35, Township 63 North, thence along the east boundary of Section 35, Township 63 North, Range 14 West and eastward along the north boundaries of Section 1, Township 62 North, Range 14 West and of Sections 6, 5, and 4, Township 62 North Range 13 West; thence south along the east boundaries of Sections 4, 9, 16, 21, 28, and 33, Township 62 North, Range 13 West and of Sections 4, 9, 16, and 21, Township 61 North, Range 13 West; thence along the north boundary of Section 27, Township 61 North, Range 13 West; thence along the east boundary of said Section; thence along the north boundaries of Sections 35 and 36, Township 61 North, Range 13 West; thence along the east boundary of Section 36, Township 61 North, Range 13 West; thence along the north boundary of Sections 6 and 5, Township 60 North, Range 12 West; thence along the east boundaries of Sections 5 and 8, Township 60 North, Range 12 West; thence along the south boundaries of Sections 8 and 7, Township 60 North, Range 12 West; thence along the east boundary of Section 13, Township 60 North thence along the south boundary of Section 13, 14, and 15, Township 60 North, Range 13 West; thence along the east boundary of Section 21, Township 60 North, Range 13 West; thence along the east boundary of Section 29, Township 60 North, Range 13 West; thence along the south boundaries of Sections 29 and 30, Township 60 North, Range 13 West and of Section 25, Township 60 North, Range 14 West; thence along the east boundary of Section 35, Township 60 North, Range

14 West; thence along the south boundary of said Section, proceeding north along the west boundary of said Section; thence along the southern boundaries of Sections 27, 28, and 29, Township 60 North, Range 14 West; thence along the east boundaries of Section 31 of said Township and of Sections 6 and 7, Township 59 North, Range 14 West; thence along the south boundary of Section 7 of said Township; thence along the east boundary of Section 13, Township 59 North, Range 15 West; thence along the south boundaries of Sections 13, 14, 15, and 16 of said Township; thence along the east boundaries of Sections 20, 29, and 32, Township 59 North, Range 15 West; thence along the north boundary of Section 4, Township 58 North, Range 15 West; thence along the east boundary of said Section; thence along the north boundary of Section 10 of said Township and then along the east boundary of said Section; thence along the north boundaries of Sections 14 and 13, Township 58 North, Township 15 West, and of Sections 18, 17, 16, and 15, Township 58 North, Range 14 West; Township hence south along the east boundary of Section 15 of said Township and then along the south boundary of said Section; thence south along the east boundary of Section 21, Township 58 North, Range 14 West; thence along the east boundary of Section 36, Township 58 North, Range 15 West of Township 57 North, Range 15 West, and of Township 56 North, Range 15 West; thence along the north boundaries of Township 55 North, Range 14 West; Township 55 North, Range 13 West; Township 55 North, Range 12 West; Township 55 North, Range 11 West; Township 55 North, Range 10 West; Township 55 North, Range 9 West; thence north along the west boundary of Township 56 North, Range 8 West; thence along the north boundary of Section 1 and 2, Township 56 North, Range 9 West; thence along the east boundaries of Sections 3, 4, and 5, Township 56 North, Range 9 West; thence along the west boundary of Section 5 of said Township; thence along the north boundary of said Section; thence along the east boundaries of Sections 32 and 29, Township 57 North, Range 9 West; thence along the south boundary of Section 20 of said Township; thence along the east and then the north boundaries of said Section; thence along the east boundary of Section 17, Township 57 North, Range 9 West; thence along the north boundary of said Section; thence along the west boundary of Section 8 of said Township; thence

along the south boundaries of Section 6 of said Township and of Sections 1 and 2, Township 57 North, Range 10 West; thence along the west boundaries of Section 2 of said Township and of Sections 35 and 26, Township 58 North, Range 10 West; thence along the north boundary of Section 26 of said Township, along the west boundary of Section 24 of said Township and then along the north boundary of said Section; thence along the west boundary of Section 18, Township 58 North, Range 9 West; thence along the north boundary of said Section; thence along the west boundary of Section 8 of said Township; thence along the north boundary of Sections 8, 9, and 10 of said Township; thence along the east boundary of Section 10, Township 58 North, Range 9 West; thence along the north boundary of Sections 14 and 13, Township 58 North, Range 9 West and of Sections 18, 17, and 16, Township 58 North, Range 8 West; thence along the west boundary of Sections 10 and 3, Township 58 North, Range 8 West; thence along the north boundary of Sections 3, 2, and 1, Township 58 North, Range 8 West and of Township 58 North, Range 7 West and of Township 58 North, Range 6 West and of Sections 6, 5, and 4, Township 58 North, Range 5 West; thence along the west boundary of Section 34, Township 59 North, Range 5 West; thence along the north boundary of said Section; thence along the west boundary of Section 26 of said Township; thence along the north boundary of said Section; thence, along the west boundaries of Sections 24, 13, and 12 of said Township; thence along the north boundary of section 12, Township 59 North, Range 5 West and of Section 7, Township 59 North, Range 4 West; thence along the west boundary of Section 5, Township 59 North, Range 4 West; hence along the north and east boundaries of said Section; thence along the north boundary of Section 4, Township 59 North, Range 4 West; Township hence along the west boundary of Section 34, Township 60 North, Range 4 West; Township hence along the north boundary of said Section; thence along the west, north, and east boundary of Section 26, Township 60 North, Range 4 West; thence along the north boundary of Section 36, Township 60 North, Range 4 West and of Section 31, Township 60 North, Range 3 West; Township hence along the west boundaries of Sections 29 and 20 of said Township; thence along the north boundaries of Sections 20 and 21 of said Township; thence along the west boundaries of Sections

15 and 10 of said Township; thence along the north boundaries of Sections 10 and 11 of said Township; thence along the west boundary of Section 1 of said Township; thence along the north boundary of said Section and of Sections 6 and 5, Township 60 North, Range 2 West; Township hence along the west and north boundaries of Section 33, Township 61 North, Range 2 West; thence along the west and north boundaries of Section 27 of said Township; thence along the west and north boundaries of Section 23 of said Township; thence along the west, north, and east boundaries of Section 13 of said Township; thence along the north boundaries of Sections 19, 20, and 21, Township 61 North, Range 1 West; thence along the west and north boundaries of Section 15 of said Township; thence along the west and north boundaries of Section 11 of said Township and of Sections 12, 7, 8, and 9, Township 61 North, Range 1 East; thence along the west and north boundaries of Section 3 of said Township and along the north boundary of Section 2 of said Township; thence along the west and north boundary of Section 36, Township 62 North, Range 1 East and along the north boundary of Section 31, Township 62 North, Range 2 East; thence along the west boundary of Section 29, Township 62 North, Range 2 East; thence along the north boundary of said Section and of Sections 28 and 27 of said Township; thence along the west and north boundary of Section 23 of said Township; thence along the west and north boundaries of Section 13, Township 62 North, Range 2 East and of Section 18, Township 62 North, Range 3 East thence along the west boundaries of Sections 8 and 5, Township 62 North, Range 3 East; thence along the south boundary of Section 31, Township 63 North, Range 3 East; thence along the west boundaries of Sections 31, 30, 19, 18, 7, and 6, Township 63 North, Range 3 East, and of Section 31, Township 64 North, Range 3 East; thence along the north boundaries of Sections 31, 32, and 33 of said Township; thence along the west, south, and east boundaries of Section 34 of said Township; thence along the west boundaries of Section 26, 23, 14, and 11, Township 64 North, Range 3 East; thence along the north boundaries of Sections 11 and 12, Township 64 North, Range 3 East to

where the United States and Canadian boundaries intersect; thence southeasterly along the United States boundary to where it meets the mouth of the Pigeon River at Pigeon Bay along the intersection of Sections 28 and 29, Township 64 North, Range 7 East; thence easterly along and around Pigeon Point; thence westerly along the shoreline of Lake Superior to the mouth of the Lester River; thence northerly along said river to the east boundary of Section 5, Township 50 North, Range 13 West; thence northward along the east boundary of said Section; thence along the north boundaries of Sections 5 and 6 of said Township and of Sections 1, 2, and 3, Township 50 North, Range 14 West; thence along the west boundaries of Sections 3 and 10 of said Township; thence along the south boundaries of Sections 9, 8, and 7 of said Township and of Section 12, Township 50 North, Range 15 West to its intersection with U.S. Highway 53 to its intersection with the north boundary of Section 20, Township 58 North, Range 17 West; thence eastward along the north boundaries of Sections 20, 21, and 22, Township 58 North, Range 17 West; thence along the west boundaries of Sections 14, 11, and 2, Township 58 North, Range 17 West and of Section 35, Township 59 North, Range 17 West; thence along the north boundary of said Section; thence along the west and north boundaries of Section 25 of said Township; thence along the west boundaries of Sections 19 and 18, Township 59 North, Range 16 West; thence along the south boundaries of Sections 12 and 11, Township 59 North, Range 17 West; thence along the east and south boundaries of Section 15 of said Township; thence along the east boundary of Section 21 of said Township; thence along the south boundaries of Sections 21, 20, and 19 of said Township to the intersection of the latter Section's south boundary with U.S. Highway 53; thence northerly along U.S. Highway 53 to its intersection with the west boundary of Section 17, Township 59 North, Range 17 West; thence northward along the west boundaries of Sections 17, 8, and 5 of said Township to the south boundary of Section 31, Township 60 North, Range 17 West; thence along the south boundary of said Section to the southwest corner of Section 32 of said

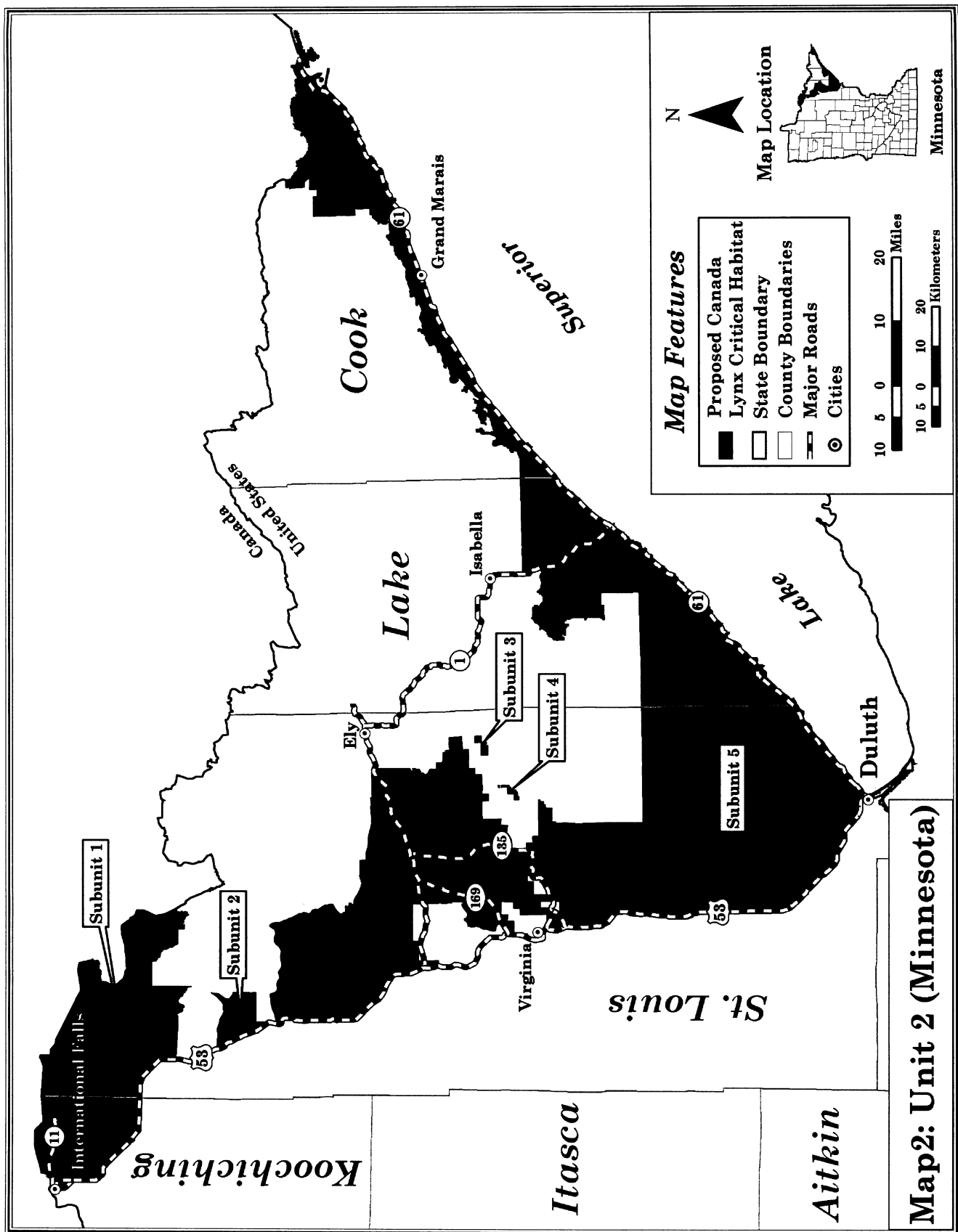
Township; thence along the north boundary of Section 29 of said Township; thence along the west boundaries of Sections 21 and 16 of said Township; thence along the north boundaries of Sections 16, 15, 14, and 13 of said Township; thence along the west boundaries of Township 60 North, Range 16 West and of Township 61 North, Range 16 West; thence along the south boundary of Township 62 North, Range 17 West; thence along the east and south boundaries of Section 1, Township 61 North, Range 18 West; thence along the south boundaries of Sections 2 and 3 of said Township; thence along the east boundaries of Sections 9, 16, and 21 of said Township; thence along the south boundary of Section 21 of said Township to its intersection with U.S. Highway 53; thence northerly along U.S. Highway 53 to its intersection with the west boundary of S18, Township 65 North, Range 19 West; thence southward along said boundary; thence along the south boundary of said Section; thence along the west boundary of Section 17, Township 65 North, Range 19 West; thence along the north boundaries of Sections 17, 16, 15, and 14 of said Township; thence along the east boundary of Section 14 of said Township; thence along the north boundaries of Section 24 of said Township and of Sections 19, 20, and 21, Township 65 North, Range 18 West; thence along the west boundary of Section 22 of said Township; thence along the north boundaries of Sections 22, 23, and 24 of said Township; thence along the east boundary of said Township; thence along the north boundaries of Sections 18, 17, 16, and 15, Township 65 North, Range 17 West, to the point of beginning at the northeast corner of Section 15, Township 65 North, Range 17 West.

(ix) Within the subunits described in (6)(ii) to (6)(xiii) above, the following areas are not included in the critical habitat designation: Township 58 North, Range 16 West, Sections 3, 8, 9, 10, 16, and 17; and Township 58 North, Range 17 West, Sections 16, 24, 25, and 26.

(x) **Note:** Map 2 of Unit 2 (Minnesota) follows:

**BILLING CODE 4310-55-P**





(7) Unit 3: Northern Rocky Mountains Unit; Boundary County, Idaho; Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton counties, Montana.

(i) Coordinate Projection: UTM, NAD83, Zone 12, Meters. Coordinate Definition: (easting, northing). Unit 3 is divided into 18 subunits to facilitate description.

(ii) *Subunit 1.* Starting at the intersection of the Idaho/Canada border and 4000 feet elevation contour (122032, 5440460), follow the 4000 feet elevation contour to intersection with Montana/Canada border (151617, 5438492). Follow Montana/Canada border west to intersection with 4000 feet elevation contour (147739, 5438749). Follow 4000 feet elevation contour to intersection with Montana/Canada border (147356, 5438775). Follow Idaho/Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Eastport, Canuck Peak, Northwest Peak, Garver Mountain, Bonnet Top, Yaak, Clark Mountain, Mount Baldy, Line Point, Meadow Creek, Curley Creek, and Newton Mountain.

(iii) *Subunit 2.* Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (152307, 5438447), follow the 4000 feet elevation contour to intersection with Montana/Canada border (157205, 5438130). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Garver Mountain and Bonnet Top.

(iv) *Subunit 3.* Starting at coordinate (158408, 5437023), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quad; Bonnet Top.

(v) *Subunit 4.* Starting at coordinate (160775, 5430791), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Bonnet Top and Mount Henry.

(vi) *Subunit 5.* Starting at coordinate (161176, 5427344), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Bonnet Top, Mount Henry, Yaak, and Lost Horse Mountain.

(vii) *Subunit 6.* Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (163418, 5437730), follow the 4000 feet elevation contour to intersection with Montana/Canada border (186741, 5436254). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Mount Henry, Robinson

Mountain, Red Mountain, Webb Mountain, Boulder Lakes, Lost Horse Mountain, Yaak, Clark Mountain, Mount Baldy, Sylvanite, Flatiron Mountain, Pink Mountain, Parsnip Mountain, Inch Mountain, Volcour, Ural, Banfield Mountain, Gold Hill, Turner Mountain, Alexander Mountain, and Vermiculite Mountain.

(viii) *Subunit 7.* Starting at coordinate (143538, 5402032), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Sylvanite, Flatiron Mountain, Turner Mountain, Pulpit Mountain, Kilbrennan Lake, Kootenai Falls, and Scenery Mountain.

(ix) *Subunit 8.* Starting at coordinate (154367, 5393646), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Turner Mountain, Gold Hill, Libby, and Scenery Mountain.

(x) *Subunit 9.* Starting at coordinate (174032, 5379043), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Vermiculite Mountain and Alexander Mountain.

(xi) *Subunit 10.* Starting at coordinate (199737, 5417559), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Webb Mountain, Beartrap Mountain, Eureka South, Inch Mountain, McGuire Mountain, Pinkham Mountain, Edna Mountain, Volcour, Davis Mountain, Skillet Mountain, Alexander Mountain, Cripple Horse Mountain, Warland Peak, Bowen Lake, Tony Peak, Richards Mountain, Wolf Prairie, and Fisher Mountain.

(xii) *Subunit 11.* Starting at coordinate (217651, 5399051), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Stryker, Skillet Mountain, Sunday Mountain, Radnor, Bowen Lake, Dunsire Point, Johnson Peak, Tally Lake, Wolf Prairie, Horse Hill, Sylvia Lake, Ashley Mountain, Lost Creek Divide, Rhodes, Deer Creek, Lynch Lake, Dahl Lake, Pleasant Valley Mountain, Lone Lake, Blue Grass Ridge, Thompson Lakes, Meadow Peak, McGregor Peak, Marion, Haskill Mountain, and Kila.

(xiii) *Subunit 12.* Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (205956, 5435192), follow the 4000 feet elevation contour to intersection with Montana/Canada border (245279, 5433300). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Eureka North, Ksanka Peak, Stahl Peak, Tuchuck Mountain, Mount Hefty, Trailcreek, Polebridge,

Whale Buttes, Red Meadow Lake, Mount Thompson-Seton, Mount Marston, Fortine, Stryker, Bull Lake, Upper Whitefish Lake, Moose Peak, Cyclone Lake, Demers Ridge, Huckleberry Mountain, Skookoleel Creek, Werner Peak, Olney, Beaver Lake, Whitefish, and Columbia Falls North.

(xiv) *Subunit 13.* Starting at coordinate (263061, 5395697), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Demers Ridge and Huckleberry Mountain.

(xv) *Subunit 14.* Starting at coordinate (269763, 5390173), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; McGee Meadow, Huckleberry Mountain, and Hungry Horse.

(xvi) *Subunit 15.* Starting at coordinate (268105, 5372525), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Columbia Falls North and Hungry Horse.

(xvii) *Subunit 16.* Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (247220, 5433213), follow the 4000 feet elevation contour to intersection with tribal land boundary (275116, 5307842). Follow tribal land boundary to intersection with 4000 feet elevation contour (266686, 5214358). Follow 4000 feet elevation contour to intersection with tribal land boundary (266018, 5213465). Follow tribal land boundary to intersection with 4000 feet elevation contour (265946, 5213282). Follow 4000 feet elevation contour to intersection with BLM boundary (296279, 5202322). Follow BLM boundary to intersection with 4000 feet elevation contour (296556, 5202312). Follow 4000 feet elevation contour to intersection with BLM boundary (297281, 5202285). Follow BLM boundary to intersection with 4000 feet elevation contour (297438, 5202279). Follow 4000 feet elevation contour to intersection with BLM boundary (297573, 5202794). Follow BLM boundary to intersection with 4000 feet elevation contour (303183, 5206072). Follow 4000 feet elevation contour to intersection with BLM boundary (303606, 5206062). Follow BLM boundary to intersection with 4000 feet elevation contour (306985, 5204735). Follow 4000 feet elevation contour to intersection with BLM boundary (325030, 5210736). Follow BLM boundary to intersection with 4000 feet elevation contour (326639, 5211303). Follow 4000 feet elevation contour to intersection with

BLM boundary (323872, 5207394). Follow BLM boundary to intersection with 4000 feet elevation contour (321664, 5205489). Follow 4000 feet elevation contour to intersection with BLM boundary (305659, 5202137). Follow BLM boundary to intersection with 4000 feet elevation contour (303278, 5201236). Follow 4000 feet elevation contour to intersection with BLM boundary (302649, 5201258). Follow BLM boundary to intersection with 4000 feet elevation contour (300781, 5201073). Follow 4000 feet elevation contour to intersection with BLM boundary (300776, 5200954). Follow BLM boundary to intersection with 4000 feet elevation contour (299764, 5198147). Follow 4000 feet elevation contour to intersection with BLM boundary (292484, 5197608). Follow BLM boundary to intersection with 4000 feet elevation contour (291094, 5197651). Follow 4000 feet elevation contour to intersection with BLM boundary (295674, 5184534). Follow BLM boundary to intersection with 4000 feet elevation contour (295759, 5184449). Follow 4000 feet elevation contour to intersection with BLM boundary (296187, 5184021). Follow BLM boundary to intersection with 4000 feet elevation contour (295513, 5183975). Follow 4000 feet elevation contour to intersection with BLM boundary (294232, 5179074). Follow BLM boundary to intersection with 4000 feet elevation contour (294376, 5178665). Follow 4000 feet elevation contour to intersection with BLM boundary (294474, 5178641). Follow BLM boundary to intersection with 4000 feet elevation contour (295353, 5178635). Follow 4000 feet elevation contour to intersection with BLM boundary (320899, 5178236). Follow BLM boundary to intersection with 4000 feet elevation contour (321121, 5177835). Follow 4000 feet elevation contour to intersection with BLM boundary (324899, 5176961). Follow BLM boundary to intersection with 4000 feet elevation contour (325898, 5176527). Follow 4000 feet elevation contour to intersection with BLM boundary (329303, 5174047). Follow BLM boundary to intersection with 4000 feet elevation contour (329924, 5174403). Follow 4000 feet elevation contour to intersection with Interstate Highway 90 (338356, 5167811). Follow Interstate Highway 90 to intersection with USFS boundary (402512, 5159444). Follow USFS boundary to NPS boundary (334101, 5364611). Follow NPS boundary to intersection with Montana/Canada border (309104, 5430544). Follow

Montana/Canada border west to intersection with 4000 feet elevation contour (247562, 5433194). Follow 4000 feet elevation contour to intersection with Montana/Canada border (247373, 5433204). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Trailcreek, Kintla Lake, Kintla Peak, Mount Carter, Porcupine Ridge, Mount Cleveland, Gable Mountain, Chief Mountain, Babb, Lake Sherburne, Many Glacier, Ahern Pass, Mount Geduhn, Vulture Peak, Quartz Ridge, Polebridge, Demers Ridge, Camas Ridge West, Camas Ridge East, Mount Cannon, Logan Pass, Rising Sun, Saint Mary, Kiowa, Cut Bank Pass, Mount Stimson, Mount Jackson, Lake McDonald East, Lake McDonald West, McGee Meadow, West Glacier, Nyack, Stanton Lake, Mount Saint Nicholas, Mount Rockwell, Squaw Mountain, East Glacier Park, Mitten Lake, Half Dome Crag, Hyde Creek, Summit, Blacktail, Essex, Pinnacle, Mount Grant, Nyack SW, Doris Mountain, Columbia Falls South, Hash Mountain, Jewel Basin, Pioneer Ridge, Felix Ridge, Nimrod, Mount Bradley, Red Plum Mountain, Crescent Cliff, Morningstar Mountain, Swift Reservoir, Fish Lake, Volcano Reef, Walling Reef, Gateway Pass, Gooseberry Peak, Gable Peaks, Capitol Mountain, Horseshoe Peak, Circus Peak, Quintonkon, Big Hawk Mountain, Crater Lake, Woods Bay, Yew Creek, Swan Lake, Connor Creek, Tin Creek, Spotted Bear Mountain, Whitcomb Peak, Trilobite Peak, Pentagon Mountain, Porphyry Reef, Mount Wright, Cave Mountain, Ear Mountain, Our Lake, Gates Park, Three Sisters, Bungalow Mountain, Cathedral Peak, Meadow Creek, String Creek, Thunderbolt Mountain, Cilly Creek, Porcupine Creek, Cedar Lake, Salmon Prairie, Swan Peak, Sunburst Lake, Marmot Mountain, Pagoda Mountain, Amphitheatre Mountain, Slategoat Mountain, Glenn Creek, Arsenic Mountain, Castle Reef, Sawtooth Ridge, Patricks Basin, Pretty Prairie, Prairie Reef, Haystack Mountain, Big Salmon Lake East, Big Salmon Lake West, Holland Peak, Condon, Peck Lake, Piper-Crow Pass, Mount Harding, Hemlock Lake, Cygnet Lake, Holland Lake Shaw Creek, Una Mountain, Pilot Lake, Trap Mountain, Benchmark, Wood Lake, Double Falls, Bean Lake, Steamboat Mountain, Jakie Creek, Scapegoat Mountain, Flint Mountain, Danaher Mountain, Hahn Creek Pass, Crimson Peak, Morrell Lake, Lake Inez, Lake Marshall, Gray Wolf Lake, Saint Marys Lake, Upper Jocko Lake, Seeley Lake West, Seeley Lake East, Morrell Mountain, Dunham Point,

Spread Mountain, Lake Mountain, Olson Peak, Heart Lake, Caribou Peak, Blowout Mountain, Rogers Pass, Cadotte Creek, Silver King Mountain, Stonewall Mountain, Arrastra Mountain, Coopers Lake, Ovando Mountain, Ovando, Woodworth, Salmon Lake, Belmont Point, Gold Creek Peak, Wapiti Lake, Stuart Peak, Evaro, Northwest Missoula, Northeast Missoula, Blue Point, Sunflower Mountain, Potomac, Greenough, Bata Mountain, Chamberlain Mountain, Browns Lake, Marcum Mountain, Moose Creek, Lincoln, Swede Gulch, Stemple Pass Wilborn, Granite Butte, Nevada Mountain, Finn, Nevada Lake, Helmville, Chimney Lakes, Wild Horse Parks, Elevation Mountain, Union Peak, Mineral Ridge, Clinton, Bonner, Iris Point, Ravenna, Medicine Tree Hill, Bearmouth, Drummond, Limestone Ridge, Bailey Mountain, Windy Rock, Gravely Mountain, Ophir Creek, Esmeralda Hill, Greenhorn Mountain, Austin, Black Mountain, MacDonald Pass, Elliston, Avon, Luke Mountain, Garrison, Griffin Creek, and Dunkleberg Creek. This entire area is proposed critical habitat except for the following lands: Starting at the coordinate (319039, 5226995), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Seeley Lake East and Morrell Mountain. Starting at coordinate (320624, 5225739), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Morrell Mountain. Starting at coordinate (296383, 5186663), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Clinton. Starting at coordinate (296609, 5185893), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Clinton. Starting at coordinate (296530, 5186657), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Clinton. (Within this area, land which is designated as proposed critical habitat starts at coordinate (297038, 5186474) and follows BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Clinton) Starting at coordinate (305789, 5186382), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Mineral Ridge. Starting at coordinate (305659, 5182733), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Mineral Ridge. Starting at coordinate (315723, 5179630), follow BLM boundary to

beginning. This area is found within the following USGS 1:24000 Quad; Medicine Tree Hill. Starting at coordinate (316123, 5178792), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Medicine Tree Hill. Starting at coordinate (314479, 5183663), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Union Peak. Starting at coordinate (317052, 5184417), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Union Peak. Starting at coordinate (320811, 5183108), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (319192, 5191218), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (321667, 5192351), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (320585, 5179899), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Bearmouth. Starting at coordinate (318603, 5182370), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Bearmouth, Elevation Mountain, and Union Peak. Starting at coordinate (326606, 5187107), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Wild Horse Parks. Starting at coordinate (329738, 5184069), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Wild Horse Parks. Starting at coordinate (331398, 5179218), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Drummond. Starting at coordinate (334581, 5178310), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Drummond. Starting at coordinate (332927, 5176344), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Drummond. Starting at coordinate (332167, 5175562), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Drummond. Starting at coordinate (331277, 5182437), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Drummond, Bearmouth, Elevation Mountain, and Wild Horse

Parks. Starting at coordinate (318247, 5190866), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Union Peak. Starting at coordinate (337347, 5195158), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Chamberlain Mountain. Starting at coordinate (327133, 5187734), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (327463, 5187624), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (327832, 5187474), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (326314, 5203648), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Browns Lake, Chamberlain Mountain, Bata Mountain, Union Peak, Elevation Mountain, Wild Horse Parks, and Chimney Lakes. {Within this area, land which is designated as proposed critical habitat starts at coordinate (329381, 5188913) and follows BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Elevation Mountain, and Wild Horse Parks. Starting at coordinate (319172, 5190028), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Elevation Mountain and Union Peak. Starting at coordinate (322033, 5190748), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (321061, 5189103), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (320496, 5188957), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (320558, 5188537), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (321011, 5188258), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (322810, 5187242), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain.

Starting at coordinate (322387, 5186742), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (324560, 5187643), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (325099, 5186866), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (325438, 5186581), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain. Starting at coordinate (323452, 5187427), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Elevation Mountain.} Starting at coordinate (345715, 5188825), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Chimney Lakes. Starting at coordinate (344109, 5204620), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Browns Lake. Starting at coordinate (344914, 5204270), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Browns Lake. Starting at coordinate (344118, 5204036), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Browns Lake. Starting at coordinate (357144, 5190945), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Nevada Lake. Starting at coordinate (355428, 5207566), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Coopers Lake, Marcum Mountain, and Moose Creek. {Within this area, lands which are designated as proposed critical habitat start at coordinate (350866, 5201350) and follows BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Marcum Mountain. Starting at coordinate (355141, 5201112), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Marcum Mountain.} Starting at coordinate (353703, 5200749), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Marcum Mountain. Starting at coordinate (355960, 5194323), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Marcum Mountain.

Starting at coordinate (356137, 5193615), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Marcum Mountain and Helmville. Starting at coordinate (357144, 5190945), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Nevada Lake. Starting at coordinate (364695, 5185182), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Nevada Lake. Starting at coordinate (353935, 5184938), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Nevada Lake, Helmville, Bailey Mountain, Windy Rock, and Gravely Mountain. {Within this area, lands which are designated as proposed critical habitat start at coordinate (361661, 5175019) and follows BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Windy Rock. Starting at coordinate (360888, 5173433), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Windy Rock. Starting at coordinate (363227, 5173358), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Windy Rock. Starting at coordinate (361203, 5170807), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Windy Rock.} Starting at coordinate (366405, 5170924), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Gravely Mountain. Starting at coordinate (360010, 5167874), follow BLM boundary to beginning. This area is

found within the following USGS 1:24000 Quad; Windy Rock. Starting at coordinate (359982, 5166653), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Windy Rock. Starting at coordinate (358776, 5166710), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Windy Rock. Starting at coordinate (371430, 5186097), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Finn. Starting at coordinate (370787, 5185789), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Finn. Starting at coordinate (372795, 5182611), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Finn. Starting at coordinate (375336, 5182119), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Finn and Nevada Mountain. Starting at coordinate (382582, 5172875), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Ophir Creek and Esmeralda Hill. {Within this area, land which is designated as proposed critical habitat starts at coordinate (384870, 5170249) and follows BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Ophir Creek and Esmeralda Hill.} Starting at coordinate (381775, 5171386), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Ophir Creek. Starting at coordinate (383679, 5167260), follow BLM boundary to beginning. This area

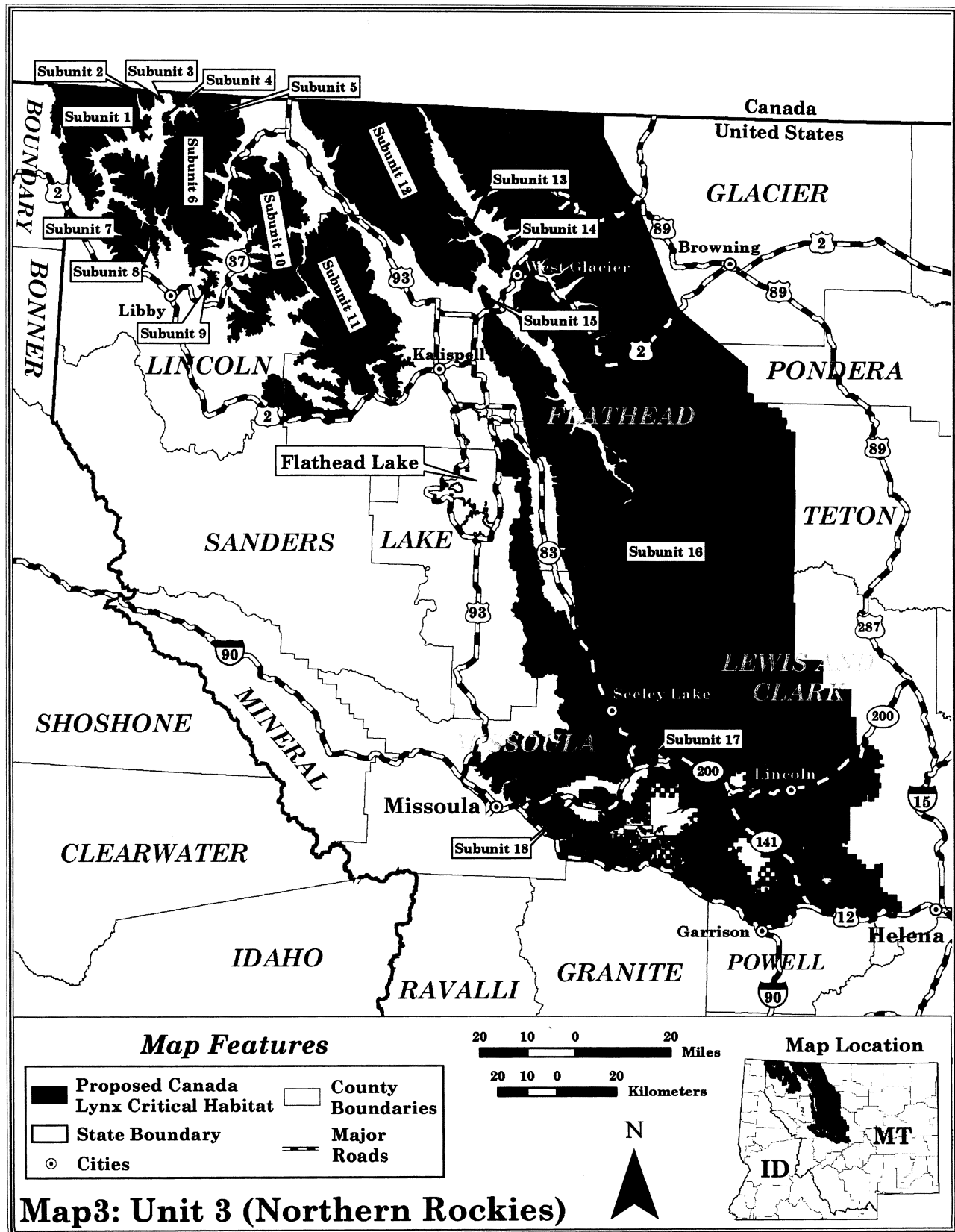
is found within the following USGS 1:24000 Quad; Ophir Creek. Starting at coordinate (382059, 5164928), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quads; Ophir Creek and Avon. Starting at coordinate (380763, 5163056), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Avon. Starting at coordinate (396769, 5161893), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; MacDonald Pass. Starting at coordinate (397969, 5162113), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; MacDonald Pass. Starting at coordinate (396918, 5161353), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; MacDonald Pass.

(xviii) *Subunit 17.* Starting at the intersection of the BLM boundary and the 4000 feet elevation contour (326229, 5210916), follow BLM boundary to intersection with 4000 feet elevation contour (326529, 5211101). Follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quad; Woodworth.

(xix) *Subunit 18.* Starting at the intersection of the BLM boundary and the 4000 feet elevation contour (299404, 5198161), follow 4000 feet elevation contour to intersection with BLM boundary (299645, 5198151). Follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Sunflower Mountain.

(xx) **Note:** Map 3 of Unit 3 (Northern Rockies) follows:

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(8) Unit 4: North Cascades Unit; Chelan and Okanogan counties, Washington.

(i) Coordinate Projection: UTM, NAD83, Zone 11, Meters. Coordinate Definition: (easting, northing). Unit 4 is divided into two subunits to facilitate description.

(ii) *Subunit 1.* Starting at the Washington/Canada border (Whatcom/Okanogan Counties boundary—"Cascade Crest") (218319, 5434639), follow the "Cascade Crest" south to coordinate (200268, 5369981). Go south approximately 250 meters (200241, 5369733) to watercourse (headwaters—Flat Creek). Follow watercourse (Flat Creek) to intersection with 4000 feet elevation contour (201629, 5366872) (Cascade Pass Quad—USGS 1:24000). Follow 4000 feet elevation contour to BLM boundary (270630, 5316493). Follow BLM boundary east to (270674, 5316490). Follow BLM boundary south to intersection with 4000 feet elevation contour (270651, 5315908). Follow 4000 feet elevation contour to BLM boundary (293481, 5382799). Follow BLM boundary north and then east to intersection with 4000 feet elevation contour (294577, 5384829). Follow 4000

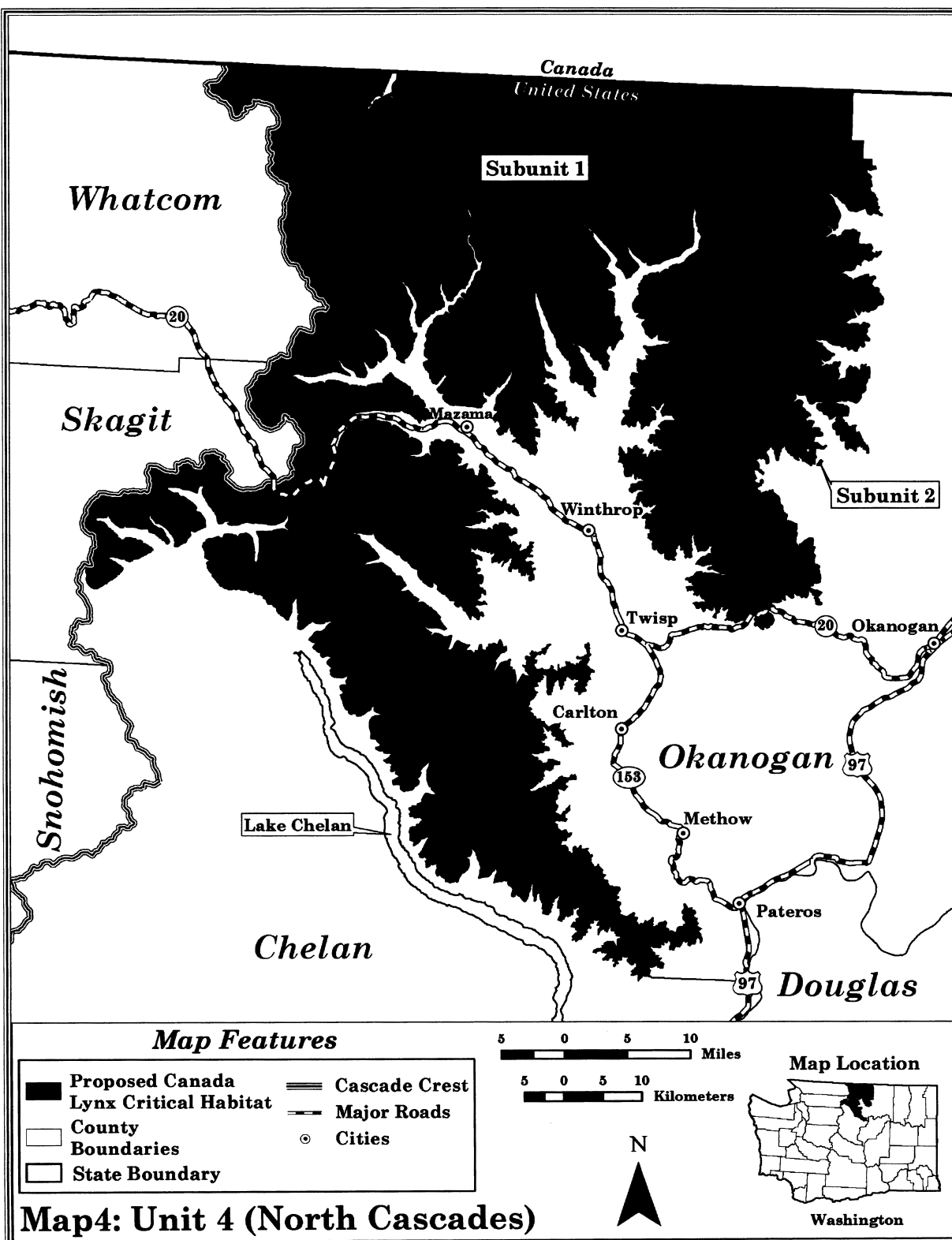
feet elevation contour to intersection with BLM boundary (301353, 5421464). Follow BLM boundary to intersection with Washington/Canada border (298454, 5431123). Follow Washington/Canada border west to intersection with 4000 feet elevation contour (240301, 5433596). Follow 4000 feet elevation contour to intersection with Washington/Canada border (239526, 5433632). Follow Washington/Canada border to beginning. This area is found within the following USGS 1:24000 Quads; Skagit Peak, Castle Peak, Frosty Creek, Ashnola Mountain, Ashnola Pass, Rimmel Mountain, Bauerman Ridge, Horseshoe Basin, Hurley Peak, Nighthawk, Tatoosh Buttes, Shull Mountain, Pasayten Peak, Mount Lago, Mount Barney, Coleman Peak, Corral Butte, Duncan Ridge, Loomis, Lost Peak, Billy Goat Mountain, Azurite Peak, Slate Peak, Robinson Mountain, McLeod Mountain, Sweetgrass Butte, Doe Mountain, Spur Peak, Tiffany Mountain, Coxit Mountain, Blue Goat Mountain, Forbidden Peak, Mount Logan, Mount Arriva, Washington Pass, Silver Star Mountain, Mazama, Lewis Butte, Pearrygin Peak, Old Baldy, Conconully West, Rendevous Mountain, Conconully

East McGregor Mountain, McAlester Mountain, Gilbert, Midnight Mountain, Thompson Ridge, Loup Loup Summit, Buck Mountain, Cascade Pass, Goode Mountain, Blue Buck Mountain, Stehekin, Sun Mountain, Oval Peak, Hoodoo Peak, Twisp West, Thrapp Mountain, Chiliwist Valley, Lucerne, Prince Creek, Martin Peak, Hungry Mountain, Big Goat Mountain, South Navarre Peak, Oss Peak, Cooper Mountain, Pateros, Manson, Cooper Ridge, and Azwell. This entire area is designated proposed critical habitat except for the following land: Starting at coordinate (292364, 5384506), follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Conconully West.

(iii) *Subunit 2.* Starting at the intersection of the 4000 feet elevation contour and BLM boundary (293662, 5382670), follow 4000 feet elevation contour to intersection with BLM boundary (294496, 5383222). Follow BLM boundary to beginning. This area is found within the following USGS 1:24000 Quad; Conconully West.

(iv) **Note:** Map 4 of Unit 4 (North Cascades) follows:

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\* \* \* \* \*

Dated: November 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05-22193 Filed 11-8-05; 8:45 am]

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Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

## S. 397/P.L. 109-92

Protection of Lawful Commerce in Arms Act (Oct. 26, 2005; 119 Stat. 2095)

## S. 55/P.L. 109-93

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## LIST OF PUBLIC LAWS

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