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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV05–959–1 FIR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the South Texas Onion Committee (Committee) for the 2004–05 and subsequent fiscal periods from $0.03 to $0.02 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* April 25, 2005.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry; McAllen, Texas 78501; Telephone (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2004–05 and subsequent fiscal periods from $0.03 to $0.02 per 50-pound equivalent of onions handled.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 3, 2004, and unanimously recommended 2004–05 fiscal period expenditures of $145,291 and an assessment rate of $0.03 per 50-pound equivalent of onions. The Committee subsequently met on October 28, 2004, and unanimously recommended a revised budget of $141,819 and a reduced assessment rate of $0.02 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $139,661. The assessment rate of $0.02 is $0.01 lower than the rate previously in effect. The decrease in the assessment rate is primarily due to the 2005 onion crop expected to be larger than previously estimated (5 million 50-pound equivalents vs. 4 million 50-pound equivalents). The reduced assessment rate and budget will lower handler costs by about $50,000 and will keep the Committee's reserves at an acceptable level. At the previous rate of assessment, assessment and interest income would exceed anticipated expenses by about $11,000, and the projected reserve on July 31, 2005,

would exceed the level authorized by the order.

The major expenditures recommended by the Committee for the 2004–05 fiscal period include $76,819 for personnel and office expenses, $30,000 for compliance, and $35,000 for promotion expenses. Budgeted expenses for these items in 2003–04 were $74,661, $30,000, and $35,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and production levels of South Texas onions, and additional pertinent factors. In its recommendation, the Committee utilized an estimate of 5 million 50-pound equivalents of assessable onions for the 2004–05 fiscal period. If realized, this will provide estimated assessment revenue of $100,000 from all handlers. In addition, it is anticipated that $41,819 will be provided by interest income and reserve funds. When combined, revenue from these sources will be adequate to cover budgeted expenses. Funds in the reserve (currently $228,168) will be kept within the maximum of approximately two fiscal periods' expenses as required by § 959.43 of the order.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2004–05 budget has been approved by USDA, and those for subsequent fiscal periods also will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 113 producers of onions in the production area and approximately 37 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2003–04 marketing year, the industry's 37 handlers shipped onions produced on 14,436 acres with the average and median volume handled being 137,530 and 111,545 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 37 handlers were estimated to be $42.5 million, with average and median revenues being $1.14 million and $931,400, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 37 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 113 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2004–05 and subsequent fiscal periods from $0.03 to $0.02 per 50-pound equivalent of onions handled. The Committee unanimously recommended 2004–05 expenditures of $141,819 and an assessment rate of $0.02 per 50-pound equivalent of onions handled. The assessment rate of $0.02 is $0.01 lower than the assessment rate previously in effect. The quantity of assessable onions for the 2004–05 fiscal period is estimated at 5 million 50-pound equivalents. Thus, the $0.02 rate should provide $100,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2004–05 fiscal period include $76,819 for personnel and office expenses, $30,000 for compliance, and $35,000 for promotion expenses. Budgeted expenses for these items in 2003–04 were $74,661, $30,000, and $35,000, respectively.

The Committee reviewed and unanimously recommended 2004–05 expenditures of $141,819, which included a decrease in administrative expenses. The assessment rate of $0.02 per 50-pound equivalent of assessable onions recommended by the Committee was determined by considering anticipated expenses and production levels of South Texas onions. The Committee utilized an estimate of 5 million 50-pound equivalents of assessable onions for the 2004–05 fiscal period, which, if realized, will provide estimated assessment revenue of $100,000 from all handlers. In addition, it is anticipated that $41,819 will be provided by interest income and reserve funds. When combined, revenue from these sources will be adequate to cover budgeted expenses.

The Committee discussed alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were not considered because the Committee had substantially lowered its assessment rate the previous fiscal year.

A review of historical information and preliminary information pertaining to

the upcoming fiscal period indicates that the season average f.o.b. price for the 2004–05 fiscal period could range between $9.25 and $19.05 per 50-pound equivalent of onions (range of Texas f.o.b. onion prices for 2001 through 2003). Therefore, the estimated assessment revenue for the 2004–05 fiscal period as a percentage of total f.o.b. revenue could range between .10 and .22 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 28, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on December 30, 2004 (69 FR 78296). Copies of that rule were also mailed or sent via facsimile to all onion handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on February 28, 2005, and no comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 959 which was published at 69 FR 78296 on December 30, 2004, is adopted as a final rule without change.

Dated: March 21, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–5897 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1469

RIN 0578–AA36

Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document establishes an amendment to the interim final rule governing activities under the Conservation Security Program (CSP) which is administered by the Natural Resources Conservation Service (NRCS). The CSP sets forth a mechanism to provide financial and technical assistance to agricultural producers who, in accordance with certain requirements, conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities. The CSP regulations implement provisions of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our Nation.

DATES: *Effective date:* March 25, 2005. Comments must be received by July 25, 2005.

ADDRESSES: Send comments by mail to Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, or by e-mail to *FarmBillRules@usda.gov*; Attn: Conservation Security Program. You may access this interim final rule via the Internet through the NRCS homepage at *http://www.nrcs.usda.gov.* Select ''Farm Bill. The rule may also be reviewed and comments submitted via the Federal Government's centralized rulemaking Web site at *http://www.regulations.gov.''*

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265.

SUPPLEMENTARY INFORMATION: This document establishes an amendment to the interim final rule governing activities under the Conservation Security Program (CSP). The CSP is a voluntary program administered by NRCS, using the authorities and funds of the Commodity Credit Corporation (CCC). CSP provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and rangeland, as well as forested land and other non-cropped areas that are an incidental part of an agricultural operation. The amendment may be reviewed via the Federal Government's centralized rulemaking Web site at *http://www.regulations.gov.*

The CSP regulations implement provisions set out in Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.*, as amended by the Farm Security and Rural Investment Act of 2002, Public Law 107–171, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our Nation.

The CSP helps support those farmers and ranchers who reach the pinnacle of good land stewardship, and encourage others to conserve natural resources on their farms and ranches. During 2004, NRCS held a CSP sign-up in 18 watersheds covering 22 states. This phased-in approach to CSP implementation brought forth several issues and concerns that encompass the broad range of agricultural production at all scales including mainstream commodity production and small-scale niche producers. Additional questions are incorporated below with a request for public comment in order to more

fully harness the program potential for environmental performance and streamline the underlying delivery system. NRCS intends to finalize the CSP rule once additional programmatic experience is gathered with a full-scale sign-up in 2005.

The CSP amendment is based on an interim final rule that was published in the **Federal Register** on June 21, 2004 (69 FR 34501). The comment period for that rulemaking proceeding ended October 5, 2004 (69 FR 56159). NRCS received more than 13,400 submissions that raised numerous issues. NRCS received over 13,300 submissions from farmers, ranchers, and other individuals, 8 from businesses, 41 from non-governmental organizations (including, but not limited to, conservation and agricultural industry organizations), one from an unidentified organization, two from academic institutions, and ten from State, local, and Tribal governments. Ninety-seven percent of the submissions were form letters, and most of the issues raised during the comment period were already raised and addressed in the interim final rule. This document affirms these earlier responses and discusses only the new issues that were not already discussed in the interim final rule. Accordingly, based on the rationale set forth in the interim final rule and this document, the provisions of the interim final rule are adopted as an amendment with changes discussed below. NRCS intends to finalize the CSP rule once additional programmatic experience is gathered with a full-scale sign-up in 2005.

Responses to Comments

We first address general comments and then present our response to comments and explanation of changes associated with specific sections of the interim final rule. In addition to the changes discussed below, NRCS also made non-substantive changes for purposes of clarification.

Commenters asserted that NRCS should adopt the highly successful model of producer-initiated grants under USDA's Sustainable Agriculture Research and Education (SARE) program in establishing protocols and payment rates for on-farm research and demonstration. Although NRCS made no changes based on these comments, NRCS is reviewing the SARE program and other programs to determine whether to expand the eligible list of enhancements that could be allowed under the statutory provisions.

Commenters asserted that NRCS should not allow participation in the CSP by farmers who spray any toxics based on the argument that such farmers would have already despoiled the land. NRCS made no changes based on these comments. To be eligible for CSP payments, producers must meet minimum soil and water requirements which could not be met unless producers followed appropriate practices regarding the use of fertilizers, manure, and pesticides.

Commenters asserted that NRCS should reconsider whether the Conservation Security Program is the proper program to provide incentives for types of renewable energy production that already qualify for Federal incentives, such as tax credits and grant funding. NRCS made no changes based on these comments. The statutory provisions at 16 U.S.C. 3838a specifically provide for the CSP to assist producers of agricultural operations in promoting, among other things, the ''conservation and improvement of the quality of * * * 'energy' and identifies energy conservation measures as eligible conservation practices.'' This rule is constructed to include energy management and energy creation when it ultimately leads to conservation or improvement.

Commenters asserted that the regulations should include provisions reflecting the statutory provisions for renewal of contracts. NRCS made no changes based on these comments. This is covered adequately by the statute.

Section by Section Discussion

Section 1469.2 Administration

Commenters asserted that to prevent administrative overreaching, NRCS should delete the provisions in § 1469.2(b) that grant the NRCS Chief authority to modify or waive provisions of the CSP. NRCS made no changes based on these comments. The provisions of § 1469.2(b) contain appropriate safeguards by allowing a waiver only if the Chief determines (for a particular limited situation) that the provisions to be waived would be inappropriate and inconsistent with the goals of the program.

Section 1469.3 Definitions

There were several changes and comments to the definition of agricultural land eligible to be enrolled in the CSP. The statutory provisions at 16 U.S.C. 3838a includes as eligible land for CSP ''private agricultural land (including cropland, grassland, prairie land, improved pasture land, and rangeland).'' Commenters asserted that NRCS should remove silvopasture as pastureland eligible for CSP in order to better encourage environmentally sound management of invasive species and to protect wildlife and habitat. NRCS made no changes based on these comments. Silvopasture is improved pasture land and, therefore, is eligible for CSP.

NRCS experience during the 2004 sign-up was that certain agricultural products, such as sugar maple and ginseng, might be excluded from the program by the exclusion of forestland as defined in the rule. Such products are cultivated more like orchards, typically consisting of a monoculture requiring more intensive agricultural inputs than a forestland. NRCS proposes to adjust the definition of agricultural land to include land of varying cover types, primarily managed through a low input system, for the production of food, fiber or other agricultural products to allow inclusion of these products. NRCS is proposing a conforming change to the definition of forest land.

Less intensively managed forest systems used for foraging activities are not currently included in CSP. The commercial harvest of products, such as landscaping plants, fungi, floral greens, and wild edible plants, is on the rise. Most forestland managed for these products will qualify for CSP since very rarely are nutrients of any kind applied, the areas are not grazed so protection of streams is not an issue, pest issues are generally sporadic in nature so few if any pesticides are used, harvesting of most non-wood products is accomplished by hand so equipment use is limited to existing roads, and for the most part irrigation is not used. However, the tools commonly used for assessing cropland, such as RUSLE2, are not suited for these forested conditions and there is no consistent system for collecting data to determine sustainability or quality criteria. NRCS expects that tools assessing the applicable quality criteria for the various resource concerns would need to be developed or existing tools would need to be modified to allow the agency to determine the appropriate tier and enrollment categories in which to place such operations. NRCS is seeking comment and information about the best way to accommodate and consider forested land products in CSP. Specifically, if included in future program implementation, on which landuse should the stewardship payments be based and what analytical tools should measure performance?

Commenters asserted that NRCS should modify the definition of ''agricultural operation'' to encourage efficient NRCS spending, to facilitate eligibility determinations for the agency and the producer, and to guard against program fraud and abuse. NRCS made

no changes as a result of these comments. The delineation of an agriculture operation is not a condition of eligibility. It determines contract boundaries and tier placement. Also, the definition is not the place to promote efficient spending. Program efficiency is an outcome of the eligibility, minimum requirements, and tier criteria. Fraud and abuse is handled as a separate section within the rule and has no relevance to this definition.

The interim final rule at § 1469.6(b)(3)(ii) gives some preferences to limited resource producers by allowing limited resource producer participation to be a factor considered in developing the enrollment subcategories. Commenters asserted that NRCS should change the definition of ''limited resource producer'' to increase the gross farm sales and poverty level tests and thereby include a larger number of producers to be within the category. Commenters also asserted that NRCS should change the definition of ''beginning farmer'' and ''beginning rancher'' in the interim final rule to help target the cost-share bonuses to individuals without large net incomes. NRCS made no changes based on these comments. NRCS notes that the definition of limited resource producers includes a yearly adjustment for inflation using the Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service. Also, these are definitions used in other USDA programs. Moreover, NRCS believes that placing additional emphasis on monetary factors would be inconsistent with the statutory criteria which, except for the cost share rate discussed above, does not place emphasis for monetary payments based on income.

The statutory provisions at 16 U.S.C. 3838a also state that ''forested land that is an incidental part of an agricultural operation shall be eligible for enrollment in the conservation security program.'' The definition of ''incidental forest land'' at § 1469.3 stated that ''Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.'' Commenters asserted that NRCS should remove the maximum parcel size requirement for eligible incidental forestland and increase the allowable total to 20 percent of the enrolled acreage. NRCS made no changes based on these comments. CSP is an agricultural working lands program for specifically named land uses, which does not include forestry. NRCS believes that such suggested changes are simply beyond the concept of ''incidental.''

NRCS experience in the 2004 sign-up revealed a potential need to limit the total amount of incidental land eligible for payment in a contract. For simplicity, incidental land was included with the adjacent land for purposes of calculating the stewardship and existing practice payments. NRCS proposes to limit the amount to ten percent of the total contract acreage for payment purposes.

The statutory provisions at 16 U.S.C. 3838a specify that land eligible for CSP includes rangeland. The regulations at § 1469.3 define rangeland to include ''areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted.'' Commenters asserted that the specific reference to acreage planted in crested wheatgrass should be deleted from the definition of rangeland. NRCS made a change based on these comments by removing the specific reference. NRCS did add additional examples of the types of land included in rangeland to be consistent with Society for Range Management definitions.

Under the regulations, ''resource-conserving crop rotation'' may be considered for enhancement payments. The provisions of 16 U.S.C. 3838(10) define ''resource-conserving crop rotation'' as ''a crop rotation that—(A) Includes at least 1 resource-conserving crop (as defined by the Secretary); (B) reduces erosion; (C) improves soil fertility and tilth; (D) interrupts pest cycles; and (E) in applicable areas, reduces depletion of soil moisture (or otherwise reduces the need for irrigation).'' Commenters asserted that NRCS should confine the regulatory definition of a ''resource-conserving crop rotation'' to the statutory wording, and make the necessary and appropriate revisions to the conservation practice standard for conservation crop rotation. Commenters also asserted that NRCS should add the following to the end of the definition of ''resource-conserving crops'': ''a winter annual oilseed crop which provides soil protection; and such other plantings, including non-traditional crops with substantially reduced water use needs, as the Secretary considers appropriate for a particular area.'' NRCS made no changes based on these comments. The regulations more closely relate the ''resource-conserving crop rotation'' to enhancement payments and provide examples of resource conserving crops. There are situations where one or more of the listed practices would provide additional environmental performance above the quality criteria for a specific resource concern. In these cases, the performance of the practice above the minimum criteria would qualify as an enhancement payment, such as the soil quality enhancement.

Section 1469.5 Eligibility Requirements

The provisions of § 1469.5 set forth eligibility requirements for CSP, including provisions regarding minimum level of treatment for water quality on cropland. These provisions state that the minimum treatment for water quality on cropland for Tier I and Tier II is considered achieved if the benchmark inventory indicates that the current level of treatment meets or exceeds the quality criteria according to the NRCS technical guides for these specific resource considerations: nutrients, pesticides, salinity and sediment for surface waters and nutrients, pesticides, and salinity for groundwater.

NRCS determines applicants' eligibility for Tier I and Tier II by verifying that a producer has implemented specific conservation practices and activities that at least meet the agency's technical guides for soil and water quality standards. NRCS is considering options for augmenting and enhancing its ability to evaluate applications in order to better identify producers who are effectively managing their agricultural operations from an environmental stewardship perspective. By evaluating not only which conservation practices have been implemented, but also how well the practices and activities are performing, CSP will be able to more cost effectively measure and encourage beneficial conservation outcomes.

NRCS is seeking comment on the amended eligibility provision that encompasses the agency's enhanced methodology for determining water quality performance. The amended provision states that the minimum level of treatment for water quality on cropland for Tier I and Tier II is considered achieved if the benchmark inventory indicates that the current level of treatment addresses the risks that nutrients, pesticides, sediment, and salinity present to water quality by meeting or exceeding the quality criteria. NRCS may determine that the quality criteria have been addressed both by implementing specific conservation practices or activities and by reducing the risks associated with agricultural practices to below acceptable thresholds.

NRCS is developing risk assessment indices that measure how conservation activities reduce risks to human health

and environmental quality. These new performance-based indices measure water quality risk reduction for several resource concerns, including salinity, sediment, pesticides, and nutrients. The indices use models, such as WIN-PST (a quantitative tool that examines the risks caused by certain pesticides). With WIN-PST, NRCS can develop bundles of conservation practices and management techniques that address the risks presented by pesticides. Other examples include the Phosphorous Indexes and Nitrate Leaching Indexes that allow NRCS to identify water quality risks caused by nutrients and to develop mitigation practices to reduce those risks. Other models such as APEX determine sediment delivery to surface waters and provide information about how to mitigate these risks. The Irrigation Water Management Index allows for the determination of irrigation water management practices to address the risks of salinity for water quality.

Performance indices used in CSP serve many functions including establishing basic program eligibility by determining if quality criteria have been met. In addition, they are used in calculating levels of performance above the minimum, and providing a gradational scale of performance which allows for direct environmental payment calculations. The Soil Conditioning Index is an example of a simple tool that performs all of these functions. NRCS is committed to further developing performance-based tools, models and associated indices that depict and measure environmental outcomes. It is also the agency's intent to use outcome-based tools for all its programs in the future to determine the effectiveness and impact of conservation planning and implementation in treating natural resource concerns. NRCS is also seeking comment on the potential for other performance-based indices for determining eligibility and assessing performance. In particular, NRCS is interested in public comment on indices for measuring pasture and rangeland management, as well as wildlife habitat management.

Also, with respect to the minimum level of treatment for soil quality and water quality on cropland, NRCS has added provisions stating that ''The Chief may make minor exceptions to criteria for areas, such as tropical and tundra regions, where technology tools are being refined or testing is needed to review performance data.'' Technology tools and standards are typically developed for the majority of the climatic situations, but there may be areas that have unique resource concerns where the minimum of treatment must be adjusted to provide the same level of environmental performance.

NRCS is seeking comment on the rigor of the minimum level of treatment for grazing lands for Tier I and Tier II. NRCS has modified the interim final rule to require pastureland and rangelands to have vegetation and animal management accomplished by following a grazing management plan that provides a forage-animal balance; proper livestock distribution; timing of use and managing livestock access to water courses.

Forage and animal balance means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs. The knowledge of how much forage is available, when it is available, its nutritive value, and location in the agricultural operation outlines the design of the livestock distribution and timing of use portions of the grazing plan. The determination of available forage includes leaving an appropriate level of the plant for proper regeneration and reproduction. The consumption estimates includes an amount for wildlife species which consume herbaceous plants available in the grazing unit. If there is a negative balance (not enough forage) during certain times of the year, then the producer provides supplemental feed. If there is a positive balance (too much forage), the producer might take on extra animals during that period. In highly intensive grazing rotations, the animal movement and supplemental feeding may occur more than once a day, such as after milking. In low intensity systems, such as high mountain desert areas, the animal movement will be much less often and animals are typically managed by water, shade, and salt placement or herding.

Proper timing of use prevents locating animals in overly wet pastures or high mountain zones to protect the soil from compaction and potential gully initiation. Managing the plant community addresses soil quality concerns and most of the water quality criteria for sediment and salinity and nutrient or pesticide concerns relating to runoff. Managing access to water courses addresses other water quality concerns. Depending on the topographic situation and climate, the grazing land might necessitate management options from fencing of entire stream reaches and the use of ''flash'' grazing to only fencing fragile areas in the desert and assuring that during the stream flow peaks animals are managed to be away from those areas by salt and shade placement. NRCS is seeking comment regarding the sufficiency of this minimum level of treatment for those conservation stewards to meet soil quality and water quality minimums as described in the rule.

NRCS has made several modifications to the eligibility requirements for Tier III to further clarify the agency's expectations for the highest tier of participation. NRCS is clarifying that producers seeking to be placed in Tier III must use a resource management system that addresses the entire agricultural operation. NRCS believes that a comprehensive and operational resource management system is essential for meeting and documenting the eligibility requirement that all the applicable resource concerns are addressed in accordance with the NRCS quality criteria.

NRCS has added an explicit reference to the field-based tool that NRCS will utilize to determine if an agricultural operation is addressing the wildlife resource concern. NRCS intends to rely on either a general or species specific habitat assessment guide as the basis for determining whether an index value of at least 0.5 is achieved. The intent of the general habitat assessment guide is to provide an alternative for landscapes where there is no species of conservation concern. The general guide evaluates the suitability of the types, amounts, and distribution of habitat elements that support diverse populations of wildlife species. The species specific habitat assessment guide was also included so that watersheds can assess conservation efforts on behalf of a single species in need of special assistance. The species guide evaluates the quality and quantity of elements such as shelter, food and water that are needed to satisfy the life requirements of a particular species of conservation concern. NRCS has determined that either assessment technique is valid and appropriate to document the impact of conservation activities on working lands.

NRCS has added a specific eligibility requirement for Tier III contracts that all riparian corridors within the agricultural lands or incidental parcels offered for CSP contracts are buffered to restore, protect, and enhance riparian resources. Riparian corridors are essential elements of working landscapes. Practices and activities on agricultural lands can have a profound positive impact on riparian corridors, especially when they are positioned to intercept sediment, nutrients,

pesticides, and other materials in surface runoff, reduce nutrients and other pollutants in shallow subsurface water flow, retard stream-bank mass movement, and provide litter or other habitat components to address fish and wildlife needs. NRCS is adding this specific eligibility requirement to highlight the importance of riparian zone practices and activities in contributing to stream and river health and providing other benefits such as wildlife habitat.

There are a number of conservation practices and activities that can be utilized to comprehensively protect riparian areas and enhance their function as habitat for aquatic species.

For example, vegetative filter strips help improve water quality benefits and surface runoff control. Forest buffers and herbaceous cover promote wildlife habitat benefits. Streambank stabilization structures and bio-engineering actions, such as, willow-plugs help stabilize shorelines and reduce streambank erosion. Other practices, such as fencing, livestock walkways, and livestock watering facilities, also work in concert to protect riparian areas from degradation.

Riparian corridor resource concerns will be included and documented as part of the benchmark condition inventory for Tier III contracts and will be included as part of any resource management system developed for CSP contracts transitioning to Tier III. Riparian areas that are enrolled in the Conservation Reserve Program and the Wetlands Reserve Program are not eligible for CSP payments but may be used to demonstrate eligibility for Tier III contracts.

NRCS is proposing to use the NRCS Stream Visual Assessment Protocol (SVAP) to determine if riparian corridors have been adequately treated in future rulemaking. SVAP is a field technique used to evaluate the ecological condition of a stream and its riparian corridor. It contains standard evaluation elements (*e.g.*, channel condition, hydrologic alteration, riparian zone, bank stability) that combine to yield an overall quality rating for a stream reach or other aquatic habitat. NRCS is considering requiring in the final rule that riparian corridors within agricultural operations offered for the program will meet the minimum eligibility criteria for Tier III if the SVAP indicates that 50% of the habitat potential is provided. NRCS is seeking comment on the rigor of the minimum level of treatment for riparian corridors for Tier III if such a measure is used. NRCS will evaluate the use of SVAP during the 2005 sign-up to determine if it would be feasible to use it to determine minimum eligibility for Tier III.

The CSP rewards stewards who improve and protect riparian areas through a wide variety of enhancement options. Producers demonstrating the top levels of total resource conservation, including protecting and enhancing riparian areas, will qualify for the highest level of CSP participation.

Environmental performance and actual field based outcomes have proven difficult for agencies to establish and report. Typically agencies report progress toward achieving environmental goals as outputs such as acres managed (for example resource management systems planned or applied on grazing lands), acres created (such as wetlands), or permits issued (for regulatory agencies). NRCS broke through the performance outcome barrier with its use of the soil conditioning index (SCI) during the 2004 CSP sign-up. The SCI estimates the amount of net carbon stored in the soil and the reduction in sediment leaving the land on an annual basis. The enhancement payment is based on the value of the outcomes rather than calculated on the paradigm for cost-share programs—the cost of implementing an activity. Additionally NRCS is in the process of developing performance-based indices similar to the Soil Conditioning Index for the major resource concerns along with a payment structure that corresponds with the environmental benefit produced. NRCS seeks comment of this approach to enhancement payments as a basis for rewarding environmental performance.

Section 1469.20 Application for Contracts

During the 2004 sign-up, NRCS recognized that despite the ''one contract at any one time'' provision of the regulation, this limit was only applied to the producer who actively managed the agricultural operation, and not to any other participant in the CSP contract. NRCS seeks to clarify that the one contract limit applies to all signatories to the CSP contract and is seeking comments on this interpretation which will be utilized in the FY 2005 sign-up. Conforming changes were made to the definition of ''participant'' and elsewhere in the rule to recognize that the CSP contract may be signed by multiple parties whom may not all be producers.

Section 1469.21 Contract Requirements

Commenters asserted that clarification was needed regarding the contract length when a contract transitions from Tier I to a higher tier. The provisions of the interim final rule did not allow contracts to extend beyond the original five-year contract length once the transition to a higher tier occurred. NRCS agrees with the comments and has added § 1469.21(d)(4) to allow for a contract adjustment once the transition occurs. NRCS will assure that the conservation criteria are met prior to the transition by conducting a field visit and review of those contracts.

Commenters asserted that clarification was needed regarding the watershed rotational cycle. They were concerned that the watershed might come again into sign-up before the Tier II and Tier III 10-year contracts were completed. The interim final rule states in § 1469.5(b) that ''Producers who are participants in an existing conservation stewardship contract are not eligible to submit another application.'' and in § 1469.20(d) that ''Producers can only have one active contract at any one time.'' NRCS made no changes based on these comments.

Commenters requested that NRCS give the watersheds selected to participate in the FY 2004 pilot sign-up another chance to participate in the Conservation Security Program in the next year or two based on the argument that there was too little time allowed for the sign-ups to occur, contracts to be signed, and payments to be made before the end of the fiscal year. Additionally, sign-up occurred during harvest period which further decreased participation. In the May 4, 2004, notice on watershed process and in the preamble to the June 21, 2004, interim final rule NRCS discusses the benefits of a watershed rotation and further states, ''The watershed approach includes a rotation system aspect in that all watersheds will be selected once before any are selected for a second time.'' (69 FR 34505, June 21, 2004). Additionally 69 FR 24560, May 4, 2004, states, ''NRCS expects that the selection of different watersheds for each sign-up will result in every farmer and rancher being potentially eligible for CSP over the next 8 years. No qualifying producer will be left out.''

However, due to the concerns expressed to NRCS, the agency has determined that the 18 watersheds will be reopened only for new applicants during the 2005 sign-up. The agency is still committed to the established watershed rotation process and will continue to utilize it in subsequent

years. However, NRCS recognizes that there were unique circumstances in the program's first year and it seeks to fairly treat the farmers and ranchers in those first watersheds.

The provisions of the interim final rule at § 1469.21(c)(2) provided that to be eligible for Tier II, a participant must include ''the treatment of an additional locally significant resource concern'' by the end of their contract period. This was originally included to assure that Tier II participants achieved additional resource benefits beyond the minimum level of soil and water quality. NRCS's experience with the 2004 sign-up revealed that this requirement may be difficult to implement in cases where the producer has either already addressed the relevant locally significant resource concerns or no locally significant resource concerns existed on the operation. In some cases, NRCS and the producers had to identify a resource concern that added little environmental benefit compared to its cost to fulfill this contract requirement.

To ensure that CSP Tier II participants focus on significant resource concerns that provide substantial offsite environmental benefits and to streamline application review and acceptance, NRCS will determine, for each participating watershed, a pressing locally significant resource concern. Tier II applicants will only be required to address this concern if it is applicable to their operation and not already fully addressed to NRCS's quality criteria. Otherwise this requirement will be considered satisfied. Participants may receive cost-share payments for new practices required to address this resource concern, if offered as part of the sign-up, to assist them in fulfilling this contract requirement.

The provisions of the interim final rule at §§ 1469.21(d)(3), 1469.23(c)(5), and 1469.24(b) required that a participant achieve a higher Tier for at least 12 months before becoming eligible for corresponding payments based on the higher Tier. Commenters asserted that the regulations should not impose such a barrier based on the argument that participants have earned the higher payments when they meet the requirements for a higher Tier and that removal of the barrier would encourage participants to obtain a higher Tier as soon as possible. In response, NRCS has deleted the 12-month requirement based on the arguments submitted by the commenters, but have added the provision that a field verification will be conducted by NRCS prior to transition to assure program compliance with the new tier requirement.

Section 1469.23 Program Payments

The provisions of 16 U.S.C. 3838c(b)(3) state that payment to a producer shall not be provided for ''construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations.'' Pursuant to this authority, the regulations at § 1469.23(c)(3)(i) state that NRCS may not make new practice payments for such facilities or devices. Commenters asserted that the prohibitions should apply to all payment components and not just to the new practice component. NRCS agrees with the comments and has made adjustments in § 1469.23(c)(3) and added a new subsection, § 1469.23(i).

Commenters asserted that the regulations should include feedlots in the stewardship payment computation. NRCS made no changes based on these comments. Feedlots are not a land type eligible for CSP.

To be eligible for payments under CSP, the provisions of 16 U.S.C. 3838a(b) require a producer to develop and submit to NRCS a conservation security plan. Commenters asserted these provisions should be utilized. NRCS made no changes based on these comments. The statutory term ''conservation security plan'' is more descriptively described in the regulations as the ''conservation stewardship plan.'' To be eligible for payments under CSP, the provisions of § 1469.7 require a participant to develop and submit to NRCS a conservation stewardship plan.

Commenters also asserted that NRCS had abandoned the statutory provision giving beginning farmers a higher cost-share rate. NRCS considered these comments and has adjusted the section to continue the 50 percent cost-share for new practice payments, except the cost-share limit is raised to 65 percent for limited resource and beginning producers.

The statutory provisions at 16 U.S.C. 3838c(b)(2) constrain spending through a contract cap of $20,000 for Tier I, $35,000 for Tier II, and $45,000 for Tier III. The interim final rule also provided the following regulatory cap: ''The total of the stewardship component, the existing practice component, and the enhancement component may not exceed 0.15 of the stewardship payment amount without any reductions for Tier I, may not exceed 0.25 of the stewardship payment amount without any reductions for Tier II, and may not exceed 0.4 of the stewardship payment amount without any reductions for Tier III.'' Many of the commenters asserted that the payment formula should allow for payments without any reductions or caps and that the reduction is unfair to small acreage farms and dairies. NRCS agrees that the regulatory cap should be deleted because it disadvantaged small farms in areas with low rental rates.

Specifically, NRCS was concerned that tying the enhancement payment to the stewardship payment penalized small operations with significant opportunities for enhancement activities. Accordingly, NRCS deleted the specific section containing the regulatory cap, but retained the authority of the Chief to limit payments for any component in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

In the FY 2004 sign-up notice, NRCS used this authority to specify that the total annual enhancement payments per contract may not exceed $10,000 for Tier I, $17,500 for Tier II and $22,500 for Tier III, regardless of operation size. NRCS is seeking comment about the effectiveness of capping total enhancement payments. NRCS intends to cap enhancement payments in the 2005 sign-up at higher levels of $13,750 for Tier I, $21,875 for Tier II, and $28,125 for Tier III.

NRCS is seeking to encourage participants to further improve their environmental performance through CSP. CSP allows contract payment for existing enhancements based on the benchmark inventory and application. NRCS will be requiring applicants in the 2005 sign-up to agree to a variable payment rate for enhancement activities that are part of the initial contract. The annual enhancement payment will be calculated at a variable payment rate with the rate initiating at 150% for the first contract year and then at a declining rate for the remainder of the contract. This will provide contract capacity to add additional enhancements in the out-years and will encourage participants to make continuous improvements to their operation. Additionally this mechanism will allow for a more consistent number of contracts accepted for each sign-up year according to the current budget projections. In order to maintain the same level of payment over the life of the contract, the participant may add additional enhancement activities of their choice. The variable rate would be established in the sign-up announcement. NRCS is seeking comment on this action. NRCS believes that with the changes made by this document, each of the reductions and caps will help create the appropriate

balance between allowing the largest number of participants in each of the categories yet providing meaningful payments (see also the discussion regarding payment formulas in the interim final rule at 69 FR 34503).

NRCS is considering including enhancement payment limits in the final rule. NRCS is seeking comments on whether the enhancement payment limits imposed in 2004 or 2005 are appropriate and whether they should be included in the final rule to provide more consistency and regulatory certainty across different sign-ups. NRCS is also seeking comments about the establishment of individual payment sub-caps for groups of enhancement activities addressing specific resource concerns (such as air quality, energy, etc.) to encourage participants to adopt a variety of enhancement activities that would target the full suite of resource concerns on their agricultural operations.

Commenters asserted that enhancement payments should be adjusted to include maintenance costs. NRCS made no changes based on these comments. Enhancement components already are calculated to include compensation for maintenance (operation and management) in § 1469.23(d)(5)(ii). NRCS is seeking comments on the process used to determine the appropriate level of enhancement payments for practices and activities. NRCS seeks to base its enhancement payments on an objective measure of either adoption cost or environmental benefit. In some cases, especially with respect to changes in management, environmental benefits may be realized but the cost to the producer is difficult to determine. Similarly, it is not always possible to quantify and monetize the benefits generated by enhancement activities. In the cases that both are determinable, NRCS prefers to compensate producers based on the economic value of environmental benefits to recognize the environmental performance achieved by adopting a practice or activity. NRCS recognizes that the cost lists used to calculate enhancement payments are still being developed for participating watersheds and is seeking suggestions about the most effective and equitable method to determine the cost or benefits of enhancement activities.

Commenters asserted that payments should be made retroactive to the application date. NRCS made no changes based on these comments. The CSP payments are made within the same fiscal year as the application is made and includes payment for the entire year as the first contract year.

Section 1469.24 Contract Modifications and Transfers of Land

Under the provisions of § 1469.24, conservation stewardship contracts may be modified, including modifications to add or subtract land to the contract. Commenters asserted that NRCS should not allow land to be added or subtracted once a contract is signed. They asserted that this is necessary to guard against program fraud and abuse. NRCS made no changes based on these comments. The government will be a party to modifications and has expertise to help avoid fraud and abuse. The addition and subtraction of land follows the typical flow of agricultural operations in American production agriculture.

Section 1469.30 Fair Treatment of Tenants and Sharecroppers

Commenters asserted that NRCS should establish a limit for the landlord's share of any payments for land operated by a tenant. NRCS made no changes based on these comments. NRCS believes that this a contract issue that should be resolved between the landlord and the tenant.

Section 1469.31 Appeals

The regulations at § 1469.31 sets forth provisions regarding appeals. These provisions do not allow appeal of payment rates. Commenters asserted that appeals should be allowed regarding payment rates. NRCS made no changes based on these comments. As indicated in Section 1469.31, participants are not allowed to appeal matters of general applicability. Such appeals would affect all participants and would be administratively unworkable.

Executive Order 12866

The Conservation Security Program (CSP) is a voluntary Natural Resources Conservation Service (NRCS) program that recognizes the stewardship of natural resources by farmers and ranchers on working lands. The CSP takes an innovative approach in that it rewards the best stewards of the land. Over the next 8 years, CSP will be offered to all eligible farmers and ranchers in the United States.

Discussion of the Economic Analysis Benefit Cost Model

The economic analysis is based on a model that was designed to simulate producers' willingness to participate in CSP. The model includes a number of simplifying assumptions, some of which are discussed below. Because of the assumptions used, the model should not be relied on to predict actual participation rates, tier and regional distribution, or the magnitude of payments. The model is best used to predict the direction of how participation would change if a particular program feature is changed, rather than the magnitude of the change. Because program implementation has only begun, the model has not been validated so its ability to predict program participation has not been assessed.

The model provides results reflecting total participation over the next 15 years, rather than information on any particular year's sign-up. Annualized values are also presented for informational purposes, but they represent an average over the time period covered by the model, rather than any particular year. A budget constraint has not been incorporated into the model and the results do not reflect the use of enrollment categories intended to comply with any such budget constraint.

Farms—The model used ARMS 2002 Phase 3 data to construct 6,105 farm types representing the 2.1 million farms in the U.S. Such farms are likely more numerous than the agricultural operations that may enroll in CSP because several ''farms'' may be operated by a single applicant. Additionally, the model assumes that farms as small as five acres will enroll in CSP. In reality, the cost of fulfilling the eligibility requirements and applying to the program may exceed the benefits for such small farms.

Information about each representative farm includes acreage needing treatment (from the NRCS work load assessment database), acreage already treated (from the NRCS Performance and Results Measurement System), cost of installing practices, and county rental rates. Such information represents the average for the farm type and watershed in which each farm is located, and so may differ from the characteristics of actual farms enrolled in CSP. Additionally, some the data are only available on a statewide basis, so allocations to the watershed are based on the acreage covered by each land type. To the extent that agricultural operations in a watershed may have adopted conservation practices to a higher or lower degree than average, such estimates may not be accurate.

Eligibility—The model includes several assumptions about the treatment of natural resource concerns for CSP eligibility. Due to lack of data, the model considered up to six resource concerns that need to be addressed and assumed that 1.5 selected practices per acre are needed to fully treat each resource concern. If different practices or combination of practices are needed

to treat resource concerns in actual agricultural operations, producers may be less or more likely to sign up for CSP or they may enroll in a different tier than predicted by the model.

The model constructed a set of uniform decision rules to predict whether a producer would apply to CSP. These decision rules include:

- A return of at least seven percent on conservation costs to the producer during the contract,
- Minimum size farm of five acres,
- The cost of complying with eligibility requirements prior to enrollment cannot exceed 10 percent of annual rental rate of the land,
- A willingness to participate factor based on socioeconomic data from participants in other conservation programs,
- Tier selection that maximizes net return, and
- Producers are assumed to recognize only 25 percent of the onsite benefits derived from conservation practices.

To the extent producers use a different set of decision rules or consider additional factors in their decision to apply to CSP, the model results may differ from actual participation. Note for example that the decision rules do not include the cost of adopting practices to become eligible for any enrollment categories since the categories were not incorporated into the model.

Payments—The model used estimated rental rates for the purpose of calculating stewardship payments. In watersheds where there was no data on rental rates, the rates had to be imputed. The model assumes that only Tier II contracts or contracts transitioning to a higher tier will receive new practice payments. In the model for Alternatives 1 and 3, enhancement payments are assumed to either equal 50 percent of the contract statutory limit or 70 percent of the contract payment, whichever is less. For the baseline and Alternative 2, enhancement payments are assumed to either equal 50 percent of the contract statutory limit or the difference between the regulatory limit and the sum of the stewardship payments and existing practice payments. These constraints differ from the limits placed by NRCS either in the rule or in the 2004 sign-up and so the model does not reflect actual contract requirements. Producer costs for enhancement activities are assumed to be 25 percent of the enhancement payments. This may be lower or higher than actual costs and so may affect producers' willingness or ability to undertake enhancement activities.

Benefits—Due to a lack of data, no attempt was made to estimate the benefits generated by the implementation of enhancement activities. The model results therefore show a negative net benefit for the various program alternatives, because enhancements activities, which constitute a large portion of the contracts' cost, are assigned zero benefits. It is likely that enhancement activities do provide significant benefits, and therefore the results of the model should be viewed as a lower threshold of expected benefits. Tables 1a–1c provide the results of several sensitivity analyses that use different assumptions regarding enhancement activities' benefits to illustrate a range of other potential outcomes.

Discussion of Differences Between Model and Other Program Estimates

The benefit-cost model results differ from the estimate of the Cost of Program (COP) model used to predict the actual number of contracts that could be funded based on the President's budget baseline. The benefit-cost model results have a much greater participation estimate and lower average acres per contract. These differences occur because the model enrolls a greater proportion of small farms than the President's budget estimate which reduces the average payments per farm and increases the number of CSP participants. The benefit-cost model predicts a larger number of enrolled small farms than the President's budget because the model assumes that farms as small as 5 acres would participate, whereas in reality transaction costs may reduce participation of such small operations. This assumption results in a prediction that the average farm size would be about 200 acres. In contrast, the COP model using 2004 sign-up data indicates that the participating farm size would be about 750 acres on average. Varying the benefit-cost model assumption of minimum farm size has a dramatic effect on the benefit-cost model results. For example, increasing the smallest farm size to 50 acres decreases the number of farms predicted to enroll in CSP by the model by 40 percent and total government costs by 20 percent, all else being equal.

In addition to different farm sizes, the COP model assumes both a constrained budget consistent with a programmatic ramp-up funding scenario and that only about five percent of the farms would meet the minimum level of treatment for CSP. These different assumptions lead the COP model to estimate CSP participation at about 89,000 over the budget cycle of ten years while the benefit cost model estimates participation to total about 990,000 over fifteen years for the baseline (similar to the 2004 Interim Final Rule) scenario. The results of the unconstrained benefit-cost model underscore the need to use enrollment categories or other means to comply with the program's budget.

The COP is utilized by the agency to predict CSP participation using assumed budget caps within the President's budget and calculate the number of contracts alternative budget scenarios might fund. This model has assumptions that can be easily modified to reflect ever changing programmatic data. For example, the average acreage per contract and average cost per contract by tier can be estimated based on projections and then compared with actual sign-up data. The projections for the 2005 sign-up are estimated at 520 acres for a Tier I, 850 acres for Tier II and 1,400 acres for Tier III contracts. The projections for the annual average cost per existing contract are estimated at $6,000 for a Tier I, $12,500 for Tier II, and $26,600 for Tier III in FY 2005.

Discussion of Program Alternatives and Results

Baseline—No Action: The Baseline Assumes That CSP, as Implemented in 2004 Under the Interim Final Rule, Will Continue Under the Interim Final Rule Conditions

National participation in CSP under the Baseline is estimated to be a total of 989,000 farms (or about 47 percent of all ''farms'' across the U.S., as defined by the ARMS Phase 3 survey) over a fifteen year period. The Midwest leads all regions in number of participants with about 37 percent of all enrollees, followed by the Southeast (about 21 percent) and the Northern Plains (about 14 percent). Almost eighty-three percent of participation is estimated to be at the Tier I level; 10 percent either at Tier II or Tier I transitioning into Tier II; and, about seven percent in Tier III. Over 75 percent of contract payments consist of enhancement payments. An estimate of the conservation assurance payments are found in Table 1 in the ''Baseline'' column of data. Eligible producers receive these payments to increase assurance that conservation measures will continue to provide a broad and ongoing stream of environmental benefits for the public. Conservation assurance payments may induce other farmers and ranchers to install additional conservation measures that further enhance environmental quality so that they can qualify for the CSP program.

TABLE 1.—SELECTED RESULTS OF MODELING ALTERNATIVE PROGRAM STRUCTURES, FY 2005–2020

Participation totals—total over entire 15 years and average annual estimates								
Tier level	Baseline—over 15 years	Difference from baseline from baseline			Baseline—average annual [1]	Difference from baseline		
		Alt. 1	Alt. 2	Alt. 3		Alt. 1	Alt. 2	Alt. 3
Tier 1	817,617	−83,069	4,967	−78,185	272,539	−27690	1656	−26062
Tier 2	73,958	−1,995	−1,809	−3,914	49,305	−1330	−1206	−2609
Tier 3	66,940	0	15	15	44,626	0	10	10
Tier 1 to 2	27,345	1,478	−3,538	−1,950	13,673	739	−1769	−975
Tier 2 to 3	3,520	0	−440	−440	2,347	0	−293	−293
Total	989,380	−83,586	−804	−84,474	382,490	−28281	−1602	−29929
Average Annual Payout								
Tier level	Dollars per year on a 7% annualized rate				Dollars per year on a 3% annualized rate			
Tier 1	1,082	−672	−3	−674	1,006	−625	−1	−627
Tier 2	2,244	−331	55	−275	2,273	−327	58	−269
Tier 3	6,952	389	4	393	7,026	393	5	398
Tier 1 to 2	2,502	−1,233	1,478	15	2,432	−1,166	1,491	120
Tier 2 to 3	7,308	69	263	325	7,338	96	156	240
Benefits								
Location	Millions of dollars on a 7% annualized rate				Millions of dollars on a 3% annualized rate			
On-site	72	−4	−3	−7	74	−4	−3	−7
Off-site [2]	99	−9	0	−9	99	−9	0	−9
Total Benefits	171	−13	−2	−16	174	−13	−3	−17
Program Cost Information								
Costs	Millions of dollars on a 7% annualized rate				Millions of dollars on a 3% annualized rate			
Producer	198	−64	2	−62	127	−42	1	−41
Gov't TA	115	−32	2	−30	113	−30	2	−28
Gov't FA	767	−212	13	−199	750	−197	13	−184
Net Benefits, Net Returns, and Conservation Assurance Payment								
Net Benefits [3]	−143	82	−6	76	−66	59	−6	52
Net Returns [4]	641	−152	9	−144	697	−159	9	−150
Conservation Assurance Payments [5]	569	−148	11	−137	623	−155	12	−143

[1] Average annual participation assumes that ⅓ of all Tier 1 participants are enrolled in any one year: participants in other tiers are enrolled ⅔ of the time due to longer contract lives.
[2] Off-site benefits are environmental benefits.
[3] Net benefits are total benefits less producer conservation costs less the cost of technical assistance. Financial assistance to producers is a benefit for producers but a cost to taxpayers and, therefore cancels out of the net benefit calculation.
[4] Net returns represents the financial assistance plus on-site benefits less producer conservation costs.
[5] Conservation assurance payments are considered to be payments to producers that exceed the total cost of practice installation and adoption. Conservation assurance payments are a cost to society, and although they are a benefit to CSP participants, they are neither a net cost nor a net benefit to the economy at large.

Features Common to all Alternatives—Enhancement payments are limited to 50 percent of the tier specific statutory limit; however, the calculation of enhancement payments differs by alternatives. Existing practice payments are calculated as 25 percent of the total stewardship payments, which is consistent with the Baseline (Interim Final Rule or Baseline scenario above). Cost-share rates for new practices installed with CSP funds are assumed to be consistent with Environmental Quality Incentives Program (EQIP) cost share rates of 50 percent.

Program Alternative 1—This alternative is similar to the Interim Final Rule, except the enhancement payments are not calculated as the difference between the regulatory limit and the sum of the stewardship payments and existing practice payments and are instead calculated as 70 percent limit of the total contract payment. The regulatory limit is not a constraint in this alternative.

National participation under Alternative 1 registers declines in all regions with especially large decreases shown in the Midwest and the South Central regions as compared with the Baseline. Although a small increase in participation occurs in those transitioning from Tier I to Tier II, the large declines in Tier I and II participants cause over-all participation to drop. The participation changes noted above result from drops in contract payments for Tier I and II while payments for Tier III and for contracts transitioning to Tier III increase. All of the change in total payments results from changes in the benefit-cost model limits on enhancement payments. Annualized net benefits, producer net

returns, and an estimate of the conservation assurance payment are found in Table 1.

Program Alternative 2—This alternative is the same as the Baseline except contracts that include movement between Tier I and Tier II are allowed to increase the length of the contract from a maximum of 5 years to 10 years.

This alternative assumes that all the constraints consistent with the Interim Final Rule are in place (that is, similar to the Baseline) however it assumes that if a producer enters a contract at a Tier I level and wants to move up to a Tier II level, the contract life is extended from 5 years to 10 years. This removes the disincentive of limiting the contract life for producers willing to implement conservation plans that would yield greater potential environmental benefits.

National participation is virtually the same as under the Baseline. Slight drops in participation are registered in the Midwest and West with a slight increase in the Southeast and virtually no change in any other region. A higher participation level in Tier I is off-set by greater declines in Tier II and those transitioning from Tier I to II and from Tier II to III. Average contract payment amounts are similar in Alternative 2 as compared with the Baseline for Tier I, II, and III participants, but are lower for those participants transitioning from Tier I to II and lower for those transitioning from Tier II to III. Annualized benefits are similar to those under the Baseline while annualized government costs (FA) are slightly higher (Table 1, Alternative 2 column).

Program Alternative 3—This alternative combines the features of Alternatives 1 and 2: Removing the regulatory limit on contract payments; calculating enhancement payments as 70 percent of total contract payments; and, allowing the length of contracts that include movement between Tier I and Tier II to increase from a maximum of 5 years to 10 years.

This alternative combines all the assumptions included in the previous alternatives. It is most similar to the Amendment to the Interim Final Rule, with the exception that the enhancement payments are limited as in Alternative 1.

National participation declines by about 8 percent compared to the Baseline—the lowest of all scenarios. Participation drops in all regions with the largest declines registered in the South Central region. As compared to the baseline, participation decreases in all tiers except Tier III. Regional and Tier level participation declines are caused by an overall drop in contract payments. The large number of Tier I participants and their lower payment rates masks the much larger payments to participants in the other tiers and the transition between tiers.

Selected Alternative

Alternative 3 is the most similar to the changes adopted by the Amendment to the Interim Final Rule. The model predicts that Alternative 3 will produce higher social net benefits than the Baseline. However, Alternative 3 results in lower net benefits than Alternative 1. There are programmatic reasons for selecting Alternative 3 (Amendment to the Interim Final Rule) over Alternative 1. In response to public comments, the agency also decided that contracts that include a transition from Tier I to Tier II should be granted the same contract length limit that is provided to Tier II contracts.

Alternative 3 provides lower net returns to producers than the Baseline (2004 Interim Final Rule). This is primarily the result of assuming more stringent limits on enhancement payments in the model than those provided either in the 2004 Interim Final Rule or in the 2005 Amendment to the Interim Final Rule. To the extent that the agency would likely select less stringent limits for the 2005 sign-up, producers' actual net returns may be higher and more comparable to those provided by the Baseline.

Results Viewed Under Varying Assumptions Concerning Enhancement Benefits and Costs

The benefit cost analysis discusses the uncertainty in calculating enhancement benefits and the interpretation of costs. The following three tables highlight some of the results as found in Table 1, but report them under different assumptions regarding the annualized benefits and costs of enhancement activities. As would be expected, these assumptions have a great effect on expected program net benefits. Table 1a excludes all enhancement benefits and implementation costs from producer conservation costs and government financial assistance. Thus, net benefits are higher than those found in Table 1. Table 1b reports the results after enhancement benefits are set equal to enhancement implementation costs. Table 1c summarizes the model results the same way as in Table 1, but producer net returns now reflect that the ratio of enhancement benefits and costs are assumed to be the same as the ratio of existing annualized practice benefits and costs. Under all alternatives, the calculations produce the same level of conservation assurance payment received by producers, regardless of the assumptions made.

TABLE 1A.—SUMMARY OF TOTAL BENEFITS AND COSTS, AND INCREMENTAL CHANGE BY ALTERNATIVE, EXCLUDING ENHANCEMENT BENEFITS AND IMPLEMENTATION COSTS

[Annualized at 7 percent, FY 2005–2020] [1]

Alternative	Benefits			Producer conservation costs	Gov't expenditure		Net benefits [3]	Producer net returns [4]	Conservation assurance payment [5]
	Onsite	Offsite [2]	Total		Tech. assist.	Fin. assist			
Annual Payment Value, $ Millions									
Baseline	$72	$99	$171	$53	$28	$185	$90	$204	$132
1	−4	−9	−13	−11	0	−2	−2	5	9
2	−3	0	−2	4	3	22	−10	16	18
3	−7	−9	−16	−12	0	2	−4	7	14

TABLE 1B.—SUMMARY OF TOTAL BENEFITS AND COSTS, AND INCREMENTAL CHANGE BY ALTERNATIVE, WITH ENHANCEMENT BENEFITS EQUAL TO ENHANCEMENT IMPLEMENTATION COSTS

[Annualized at 7 percent, FY 2005–2020] [1]

Alternative	Benefits			Producer conservation costs	Gov't expenditure		Net benefits [3]	Producer net returns [4]	Conservation assurance payment [5]
	Onsite	Offsite [2]	Total		Tech. assist.	Fin. assist			
Annual Payment Value, $ Millions									
Baseline	$319	$434	$753	$198	$115	$767	$439	$887	$569
1	25	−40	−66	−64	−32	−212	30	−173	−148
2	−5	0	−5	2	2	13	−8	6	11
3	−28	−38	−66	−62	−30	−199	26	−165	−137

TABLE 1C.—SUMMARY OF TOTAL BENEFITS AND COSTS WITH ENHANCEMENTS BENEFITS USING SAME RATIO AS NEW PRACTICE AND EXISTING PRACTICE BENEFITS AND COSTS

[Annualized at 7 percent, FY 2005–2020] [1]

Alternative	Benefits			Producer conservation costs	Gov't expenditure		Net benefits [3]	Producer net returns [4]	Conservation assurance payment [5]
	Onsite	Offsite [2]	Total		TA	FA			
Annual Payment Value, $ Millions									
Baseline	$343	$1,182	$1,525	$198	$115	$767	$1,211	$912	$569
1	−75	−292	−367	−64	−32	−212	−271	−223	−148
2	−3	−1	−4	2	2	13	−8	8	11
3	−70	−260	−330	−62	−30	−199	−238	−206	−137

[1] Annual Payment over 15 years at 7% interest.
[2] Offsite Benefits are environmental benefits.
[3] Net Benefits are total benefits less producer conservation costs (*i.e.*, the cost of installing and maintaining conservation practices) and the cost of technical assistance that accompanies those activities. Financial assistance to producers is a benefit for producers but a cost to taxpayers and, therefore, cancels out of the net benefit calculation.
[4] Producer net returns is financial assistance plus on-site benefits less producer conservation cost.
[5] Conservation Assurance Payments, in this case, are considered to be payments to producers that exceed the total cost of practice installation/adoption. Conservation Assurance Payments are a cost to society, and although they are a benefit to CSP participants, therefore are neither a net cost nor net benefit to the economy at large.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 13132, Federalism

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to Section 2702 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the Secretary ''shall use the authority provided under section 808(2) of title 5, United States Code.'' As required by 5 U.S.C. 808(2), NRCS hereby finds that additional public notice and comment prior to the effective date of this amendment to the interim final rule are unnecessary and contrary to the public interest. Even though proposed rulemaking was not required for this rulemaking, NRCS published in the **Federal Register** an Advance Notice of Proposed Rulemaking on February 18, 2003 (68 FR 7720), and a Notice of Proposed Rulemaking on January 2, 2004 (69 FR 194). In the interim final rule published in the **Federal Register** on June 21, 2004 (69 FR 34501), NRCS responded to the comments received during the comment period for the proposed rulemaking. The comment period for the original interim final rule ended October 5, 2004 (69 FR 56159). In this amendment to the interim final rule, NRCS responds to the comments received pursuant to the interim final rule, and makes some minor adjustments based on those comments and its experience from implementing CSP in FY 2004 in 18 watersheds encompassing 22 States. In FY 2005, NRCS will implement CSP in 202 watersheds encompassing all 50 States and the Caribbean. NRCS would like to gain additional information based on the more extensive sign-up prior to finalizing the CSP regulatory provisions, and thus is providing an additional opportunity to comment. However, NRCS does not believe that additional public notice through 5 U.S.C. 808(1) is necessary prior to the effective date of this amendment to the interim final rule. Congress authorized $202 million to be available to implement CSP in FY 2005. NRCS needs to obligate these funds by September 30, 2005, in order for them to be available for payment to CSP program participants. To ensure that

NRCS has the adjusted regulatory framework in place for the FY 2005 sign-up, NRCS determines that it is in the public interest for this amendment to the interim rule to be in effect upon its publication in the **Federal Register**.

Environmental Analysis

A final Environmental Assessment (EA) has been prepared to assist in determining whether this amendment would have a significant impact on the quality of the human environment. Based on the results of the final EA, NRCS issued a Finding of No Significant Adverse Impact (FONSI) on December 16, 2004. Copies of the final EA and FONSI may be obtained from Kevin Brown, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Room 5241–S, Washington, DC 20250–2890, and electronically at *http://www.nrcs.usda.gov/programs/csp/index.html* under ''Program Information''.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting record keeping or estimated paperwork burden associated with this amendment.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS is proposing to develop an online application and information system for public use.

Executive Order 12988

This amendment has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this amendment preempt State and local laws to the extent that such laws are inconsistent with this amendment. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), USDA classified this rule as major and NRCS conducted a risk assessment. The risk assessment examined environmental degradation of soil, water and air quality, water quantity, and plant and wildlife habitat in absence of the program. The risk assessment is available upon request from Kevin Brown, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/csp/index.html* under ''Program Information''.

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects in 7 CFR Part 1469

Agricultural operations, Conservation practices, Conservation stewardship contract, Conservation stewardship plan, Plant and animal management, Soil and water conservation, Soil quality, Water and air quality.

■ Accordingly, Title 7, Chapter XIV of the Code of Federal Regulations is amended by revising part 1469 to read as follows:

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

Sec.
1469.1 Applicability.
1469.2 Administration.
1469.3 Definitions.
1469.4 Significant resource concerns.
1469.5 Eligibility requirements.
1469.6 Enrollment criteria and selection process.
1469.7 Benchmark condition inventory and conservation stewardship plan.
1469.8 Conservation practices and activities.
1469.9 Technical assistance.

Subpart B—Contracts and Payments

1469.20 Application for contracts.
1469.21 Contract requirements.
1469.22 Conservation practice operation and maintenance.
1469.23 Program payments.
1469.24 Contract modifications and transfers of land.
1469.25 Contract violations and termination.

Subpart C—General Administration

1469.30 Fair treatment of tenants and sharecroppers.
1469.31 Appeals.
1469.32 Compliance with regulatory measures.
1469.33 Access to agricultural operation.
1469.34 Performance based on advice or action of representatives of NRCS.
1469.35 Offsets and assignments.
1469.36 Misrepresentation and scheme or device.

Authority: 16 U.S.C. 3830 *et seq.*

Subpart A—General Provisions

§ 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Marianna Islands.

(c) The Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

§ 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State

Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related matters, outreach efforts, and other program issues.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Indian Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of an Indian Tribe or Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Indian Tribe or Tribal Nation and the NRCS Chief.

§ 1469.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Activity means an action other than a conservation practice that is included as a part of a conservation stewardship contract; such as a measure, incremental movement on a conservation index or scale, or an on-farm demonstration, pilot, or assessment.

Agricultural land means cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced. Areas used for strip-cropping or alley-cropping and silvopasture practices will be included as agricultural land. This includes land of varying cover types, primarily managed through a low input system, for the production of food, fiber or other agricultural products.

Agricultural operation means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the applicant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. The minimum size of an agricultural operation is a field.

Applicant means a producer as defined in this rule who has requested in writing to participate in CSP.

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in 7 U.S.C. 1991(a). This requirement applies to all members of an entity; and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Benchmark condition inventory means the documentation of the resource condition or situation pursuant to § 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities in order to determine program eligibility, to design a conservation stewardship contract, and to measure the change in resource conditions resulting from conservation treatment.

Certified Conservation Planner means an individual certified by NRCS who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting producers to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and assists the producers select and implement an effective alternative that treats resource concerns and consistent with client's objectives.

Chief means the Chief of NRCS, USDA or designee.

Conservation district means any district or unit of State or local government formed under State, territorial, or Tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''land conservation committee,'' or similar name.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the Commodity Credit Corporation program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831–3836.

Conservation stewardship contract means a legal document that specifies the rights and obligations of any participant who has been accepted to receive assistance through participation in CSP.

Conservation stewardship plan means the conservation planning document that builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices, treatments, or activities to be supported under the provisions of the conservation stewardship contract.

Conservation system means a combination of conservation practices, measures and treatments for the treatment of soil, water, air, plant, or animal resource concerns.

Conservation treatment means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

Considered to be planted means a long term rotation of alfalfa or multi-year grasses and legumes; summer fallow; typically cropped wet areas, such as rice fields, rotated to wildlife habitat; or crops planted to provide an adequate seedbed for re-seeding.

Cropland means a land cover/use category that includes areas used for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural cropland, orchards, and vineyards.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of CSP in a specific area.

Enhancement payment means CSP payments available to all tiers as described in § 1469.23(d).

Enrollment categories means a classification system used to sort out applications for payment. The enrollment category mechanism will

create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

Existing practice component of CSP payments means the component of a CSP payment as described in § 1469.23(b).

Field means a part of an agricultural operation which is separated from the balance of the agricultural operation by permanent boundaries, such as fences, permanent waterways, woodlands, and crop-lines in cases where farming practices make it probable that such crop-line is not subject to change, or other similar features.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. Guides can be reviewed at the local USDA Service Center or online at *http://www.nrcs.usda.gov/technical/efotg*.

Forage and animal balance means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs.

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. Exceptions may be made by the Chief for land primarily managed through a low-input system for food, fiber or other agricultural products.

Hayland means a subcategory of ''cropland'' managed for the production of forage crops that are machine harvested. The crop may be grasses, legumes, or a combination of both.

Incidental forest land means forested land that includes all nonlinear forested riparian areas (*i.e.,* bottomland forests), and small associated woodlots located within the bounds of working agricultural land or small adjacent areas and that are managed to maximize wildlife habitat values and are within the NRCS FOTG standards for a wildlife practice. However, silvopasture that meets NRCS practice standards will be considered as pasture or range land and not incidental forestland since silvopasture is one type of intense grazing system. Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.

Indian Tribe means any Indian Tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary; or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 718.2.

Land cover/use means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material that covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

Land management practice means conservation practices and measures that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, energy management, manure management, integrated pest management, integrated crop management, resource conserving crop rotations, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Limited resource producer means a producer:

(1) With direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the conservation stewardship contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Indian Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

Maintenance means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Management intensity means the degree and scope of practices or measures taken by a producer which are beyond the quality criteria for a given resource concern or beyond the minimum requirements of a management practice, and which may qualify as additional effort necessary to receive an enhancement payment.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

Minimum level of treatment means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier

requirements to address resource concerns as defined in § 1469.5(e).

Nationally significant resource concerns means the significant resource concerns identified by NRCS in this rule and in the sign-up notice as basic program eligibility requirements.

New practice payment means the payment as described in § 1469.23(c).

Operator means an individual, entity, or joint operation who is in general control of the farming operations on the farm at the time of application.

Participant means a producer who is accepted into CSP and any signatory to a CSP contract.

Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops. Pastured cropland will receive the same stewardship payment as cropland.

Pastureland means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals and includes improved pasture. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

Practice life span means the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references.

Priority resource concern means nationally significant resource concerns and local resource concerns, approved by the Chief, for which enhancement payments will be available.

Producer means an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

Quality criteria means the minimally acceptable level of treatment as defined in the technical guide of NRCS, required to achieve a resource management system for identified resource considerations for a particular land use.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, prairie, many wetlands, some deserts, tundra, coastal marshes and wet meadows are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Resource concern means the condition of natural resources that may be sensitive to change by natural forces or human activity. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

Resource-conserving crop rotation means a crop rotation that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource-conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

Resource management system means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of NRCS.

Secretary means the Secretary of the U.S. Department of Agriculture.

Sharecropper means an individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Sign-up notice means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

Significant resource concerns means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as the additional Tier II contract requirement.

Soil quality means resource concerns and/or opportunities related to depletion of soil organic matter content through soil disturbance or by sheet, rill, and wind erosion, and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence or root penetration, salinity, and overall soil productivity.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Stewardship payment means the CSP base payment component of the payment as described in § 1469.23(a).

Structural practice means a land-based conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the activities as defined in 7 CFR part 1466.

Technical Service Provider means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR part 652.

Tenant means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land in consideration of the payment of a share of the crops or proceeds there from.

Tier means one of the three levels of participation in CSP.

Water quality means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters, and excessive nutrients and pesticides in ground waters, and any other concerns identified by state water quality agencies.

Watershed or regional resource conservation plan means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource,

and addresses applicable laws and regulations as defined in the NRCS National Planning Procedures Handbook.

Wetlands Reserve Program (WRP) means the Commodity Credit Corporation program administered by NRCS pursuant to 16 U.S.C. 3837–3837f.

§ 1469.4 Significant resource concerns.

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

§ 1469.5 Eligibility requirements.

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and contract requirements that may be included in a CSP sign-up notice pursuant to § 1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) *Applicants may submit only one application for each sign-up.* Producers who are participants in an existing conservation stewardship contract are not eligible to submit another application.

(c) *Eligible applicants.* To be eligible to participate, an applicant must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR Part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; and

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner;

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agricultural operation (landlords and owners are ineligible to submit an application for exclusively cash rented agricultural operations);

(4) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a); and

(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to information related to eligibility criteria in the sign-up notice, and information to verify the applicant's status as a beginning or a limited resource farmer or rancher.

(d) Eligible land:

(1) To be eligible for enrollment in CSP, land must be:

(i) Private agricultural land;

(ii) Private non-industrial forested land that is an incidental part of the agricultural operation;

(iii) Agricultural land that is Tribal, allotted, or Indian trust land;

(iv) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, linear practices, turn rows, intermingled small wet areas or riparian areas); or

(v) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural land such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts; and

(vi) A majority of the agricultural operation must be within a watershed selected for sign-up.

(2) The following land is not eligible for enrollment in CSP:

(i) Land enrolled in the Conservation Reserve Program;

(ii) Land enrolled in the Wetlands Reserve Program;

(iii) Land enrolled in the Grassland Reserve Program;

(iv) Public land including land owned by a Federal, State or local unit of government;

(v) Land referred to in paragraphs (d)(2)(i), (ii) (iii) and (iv) of this section may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets the minimum level of treatment on the eligible land and may be described in the conservation stewardship plan.

(3) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.

(4) Delineation of the agricultural operation.

(i) The applicant will delineate the agricultural operation to include all agricultural lands, other incidental parcels identified in paragraph (d)(1)(iv) of this section, and other lands, identified in paragraph (d)(1)(v) of this section under the control of the applicant and constituting a cohesive management unit, and is operated with equipment, labor, accounting system, and management that is substantially separate from any other land.

(ii) In delineating the agricultural operation, USDA farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation and any other additional eligible land not within a farm boundary.

(e) *Conservation standards.*

(1) Minimum tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section on part of the eligible land uses within the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section for all eligible land uses on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the applicable resource concerns to the minimum level of treatment as specified in paragraph (e)(4) of this section for all eligible land uses on the entire agricultural operation. Practices or activities shall not be required for

participation in the program unless they would have an ultimate conservation benefit as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in § 1469.5(d)(1)(v).

(2) The minimum level of treatment on cropland for Tier I and Tier II:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive.

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment addresses the risks that nutrients, pesticides, sediment, and salinity present to water quality by meeting or exceeding the quality criteria for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water.

(iii) The Chief may make minor exceptions to criteria for areas, such as tropical and tundra regions, where technology tools are being refined or testing is needed to review performance data.

(3) The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management accomplished by following a grazing management plan that provides for:

(i) A forage-animal balance;

(ii) Proper livestock distribution;

(iii) Timing of use; and

(iv) Managing livestock access to water courses.

(4) The minimum level of treatment for Tier III:

(i) The minimum level of treatment for Tier III is having a fully implemented resource management system that meets the quality criteria for the local NRCS FOTG for all applicable resource concerns and considerations with the following exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use index value of at least 50; and

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 using a general or species specific habitat assessment guide; and

(ii) All riparian corridors, including streams and natural drainages, within the agricultural operation are buffered to restore, protect, or enhance riparian resources. Riparian corridors, as appropriate, will be managed or designed to intercept sediment, nutrients, pesticides, and other materials in surface runoff; reduce nutrients and other pollutants in shallow subsurface water flow; lower water temperature; and provide litter fall or structural components for habitat complexity or to slow out-of-bank floods.

(5) In the instance of a significant natural event, such as drought, wildfire, pestilence, or flooding which would prevent the participant or applicant from achieving the minimum requirements, those requirements will be considered met so long as the participant or applicant can provide documentation of their stewardship prior to such an event.

§ 1469.6 Enrollment criteria and selection process.

(a) *Selection and funding of priority watersheds.*

(1) NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Potential of surface and ground water quality to degradation;

(ii) Potential of soil to degradation;

(iii) Potential of grazing land to degradation;

(iv) State or national conservation and environmental issues *e.g.* location of air non-attainment zones or important wildlife/fisheries habitat; and

(v) Local availability of management tools needed to more efficiently operate the program, such as digital soils information.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(b) *Enrollment categories.* The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures. NRCS will utilize enrollment categories to determine which contracts will be funded in a given sign-up.

(1) Enrollment categories may be defined by criteria related to resource concerns and levels of historic conservation treatment, including the producer's willingness to achieve additional environmental performance or conduct enhancement activities.

(2) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(3) NRCS will develop subcategories within each enrollment category and include them in the sign-up notice. The development of subcategories may consider several factors, including:

(i) Willingness of the applicant to participate in local conservation enhancement activities;

(ii) Targeting program participation for Limited Resource Producers;

(iii) Targeting program participation to water quality priority areas for nutrient or pest management;

(iv) Targeting program participation for locally important wildlife/fisheries habitat creation and protection; and

(v) Other priorities as determined by the Secretary.

(4) At the beginning of each sign-up, the Chief will announce the order in which categories and subcategories are eligible to be funded.

(5) All eligible applications will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(6) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up notice are exhausted.

(c) *Sign-up process.*

(1) NRCS will publish a CSP sign-up notice with sufficient time for producers to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(i) Any additional program eligibility criteria that are not listed in § 1469.5;

(ii) Any additional nationally significant resource concerns that are not listed in § 1469.4(a) that will apply;

(iii) Any additional requirements that participants must include in their CSP applications and contracts that are not listed in § 1469.21;

(iv) Information on the priority order of enrollment categories and subcategories for funding contracts;

(v) Specific information on the level of funding that NRCS estimates will go toward stewardship, existing practice, and enhancement payments;

(vi) An estimate of the total funds NRCS expects to obligate under new

contracts during a given sign-up, and an estimate for the number of enrollment categories and contracts NRCS expects to be able to fund; and

(vii) The schedule for the sign-up process, including the deadline(s) for applying.

(2) NRCS will accept applications according to the timeframes specified in the sign-up notice.

(d) *Selection of contracts.* (1) NRCS will determine whether the application meets the eligibility criteria, and will place applications into an enrollment category and subcategory based on the criteria specified in the sign-up notice and into a Tier based on the criteria in 1469.5(e). Enrollment categories will be funded in the order designated in the sign-up notice until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up notice, and will inform the applicant of its determinations.

(2) NRCS will develop a conservation stewardship contract for the selected applications. If the contract falls within the enrollment categories and subcategories funded in the given sign-up, NRCS will make payments as described in the contract in return for the implementation and/or maintenance of a specified level of conservation treatment on all or part of the agricultural operation.

§ 1469.7 Benchmark condition inventory and conservation stewardship plan.

(a) The benchmark condition inventory and associated case file information must include:

(1) A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage;

(2) A description of the applicant's production system(s) on the agricultural operation to be enrolled;

(3) The existing conservation practices and resource concerns, problems, and opportunities on the operation;

(4) Other information needed to document existing conservation treatment and activities, such as, grazing management, nutrient management, pest management, and irrigation water management plans;

(5) A description of the significant resource concerns and other resource concerns that the applicant is willing to address in their contract through the adoption of new conservation practices and measures; and,

(6) A list of enhancements that the applicant may be willing to undertake as part of their contract.

(b) *Conservation stewardship plan.* (1) The conservation stewardship plan and associated case file information must include:

(i) To the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation stewardship contract will achieve;

(ii) A plan map showing the acreage to be enrolled in CSP;

(iii) A verified benchmark condition inventory as described in § 1469.7(a);

(iv) A description of the significant resource concerns and other resource concerns to be addressed in the contract through the adoption of new conservation measures;

(v) A description and implementation schedule of—

(A) Individual conservation practices and measures to be maintained during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns and with the requirements of the sign-up,

(B) Individual conservation practices and measures to be installed during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns,

(C) Eligible enhancement activities as selected by the applicant and approved by NRCS, and

(D) A schedule for transitioning to higher tier(s) of participation, if applicable;

(vi) A description of the conservation activities that is required for a contract to include a transition to a higher tier of participation;

(vii) Information that will enable evaluation of the effectiveness of the plan in achieving its environmental objectives; and

(viii) Other information determined appropriate by NRCS and described to the applicant.

(2) The conservation stewardship plan may be developed with assistance from NRCS or NRCS-certified Technical Service Providers.

(3) All additional conservation practices in the conservation stewardship plan for which new practice payments will be provided must be carried out in accordance with the applicable NRCS FOTG.

§ 1469.8 Conservation practices and activities.

(a) *Conservation practice and activity selection.* (1) The Chief will provide a list of structural and land management practices and activities eligible for each CSP payment component. If the Chief's designee provides the list, it will be approved by the Director of the Financial Assistance Programs Division of NRCS. When determining the lists of practices and activities and their associated rates, the Chief will consider:

(i) The cost and potential conservation benefits;

(ii) The degree of treatment of significant resource concerns;

(iii) The number of resource concerns the practice or activity will address;

(iv) Locally available technology;

(v) New and emerging conservation technology;

(vi) Ability to address the resource concern based on site specific conditions; and,

(vii) The need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

(2) To address unique resource conditions in a State or region, the Chief may make additional conservation practices, measures, and enhancement activities eligible that are not included in the national list of eligible CSP practices.

(3) NRCS will make the list of eligible practices and activities and their individual payment rates available to the public.

(b) NRCS will consider the qualified practices and activities in its computation of CSP payments except as provided for in paragraph (d) of this section.

(c) NRCS will not make new practice payments for a conservation practice the producer has applied prior to application to the program.

(d) New practice payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract, unless a waiver was granted by the State Conservationist or the Designated Conservationist prior to the installation of the practice.

(e) Where new technologies or conservation practices that show high potential for optimizing environmental benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

(f) NRCS will set the minimum level of treatment within land management practices at the national level; however, the State Conservationist may supplement specific criteria to meet localized conditions within the State or areas.

§ 1469.9 Technical assistance.

(a) NRCS may use the services of NRCS-approved or certified Technical

Service Providers in performing its responsibilities for technical assistance.

(b) Technical assistance may include, but is not limited to: Assisting applicants during sign-up, processing and assessing applications, assisting the participant in developing the conservation stewardship plan; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and quality assurance activities.

(c) NRCS retains approval authority over the certification of technical assistance done by non-NRCS personnel.

(d) NRCS retains approval authority of the conservation stewardship contracts and contract payments.

(e) Conservation stewardship plans will be developed by NRCS certified conservation planners.

Subpart B—Contracts and Payments

§ 1469.20 Application for contracts.

(a) Applications must include:

(1) A completed self-assessment workbook;

(2) Benchmark condition inventory and conservation stewardship plan in accordance with § 1469.7 for the eligible land uses on the entire operation or, if Tier I, for the portion being enrolled;

(3) Any other requirements specified in the sign-up notice;

(4) For Tier I, clear indication of which acres the applicant wishes to enroll in the CSP; and,

(5) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up notice.

(b) Producers who are members of a joint operation, trust, estate, association, partnership or similar organization must file a single application for the joint operation or organization.

(c) Producers can submit only one application per sign-up.

(d) Participants can only have one active contract at any one time.

§ 1469.21 Contract requirements.

(a) To receive payments, each participant must enter into a conservation stewardship contract and comply with its provisions. Among other provisions, the participant agrees to maintain at least the level of stewardship identified in the benchmark inventory for the portion of land being enrolled for the entire contract period, as appropriate, and implement and maintain any new practices or activities required in the contract.

(b) Program participants will only receive payments from one conservation stewardship contract.

(c) CSP participants must address the following requirements or additional resource concerns to the minimum level of treatment by the end of their conservation stewardship contract:

(1) Tier I contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the part of the agricultural operation enrolled in CSP.

(2) Tier II contract requirements:

(i) Address an additional locally significant resource concern, as described in section III of the NRCS FOTG over the entire agricultural operation. Applicants may satisfy this requirement by demonstrating that the locally significant resource concern is not applicable to their operation or that they have already addressed it in accordance with NRCS'; quality criteria; and

(ii) Additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(3) Tier III contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(d) *Transition to a higher tier of participation.* (1) Upon agreement by NRCS and the participant, a conservation stewardship contract may include provisions that lead to a higher tier of participation during the contract period. Such a transition does not require a contract modification if that transition is laid out in the schedule of contract activities. In the event that such a transition begins with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all stewardship, existing practice, new practice payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.

(2) A contract which transitions to higher tier(s) of participation must include:

(i) A schedule for the activities associated with the transition(s);

(ii) A date certain by which time the transition(s) must occur; and,

(iii) A specification that the CSP payment will be based on the current Tier of participation, which may change over the life of the contract.

(3) A contract which transitions to a higher tier will be modified to receive the higher payments once the required level of treatment has been achieved and field verified by NRCS.

(4) A contract which includes a transition from Tier I to Tier II or III may be adjusted in length up to 10 years beginning from the original contract date.

(e) A conservation stewardship contract must:

(1) Incorporate by reference the conservation stewardship plan;

(2) Be for 5 years for Tier I, and 5 to 10 years for Tier II or Tier III;

(3) Incorporate all provisions as required by law or statute, including participant requirements to—

(i) Implement and maintain the practices as identified and scheduled in the conservation stewardship plan, including those needed to be eligible for the specified tier of participation and comply with any additional sign-up requirements,

(ii) Not conduct any practices on the farm or ranch that tend to defeat the purposes of the contract,

(iii) Comply with the terms of the contract, or documents incorporated by reference into the contract. NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct any violation and comply with the terms of the contract and attachments thereto. If a violation continues, the State Conservationist may terminate the conservation stewardship contract, and

(iv) Supply records and information as required by CCC to determine compliance with the contract and requirements of CSP;

(4) Specify the requirements for operation and maintenance of the applied conservation practices;

(5) Specify the schedule of payments under the life of the contract, including how those payments—

(i) Relate to the schedule for implementing additional conservation measures as described in the conservation stewardship plan,

(ii) Relate to the actual implementation of additional conservation measures as described in the conservation stewardship plan, and

(iii) May be adjusted by NRCS if the participant's management decisions change the appropriate set or schedule

of conservation measures on the operation; and,

(6) Incorporate any other provisions determined necessary or appropriate by NRCS, or included as a requirement for the sign-up.

(f) Practices scheduled in contracts must be applied and maintained within the timelines specified in the contract.

(g) Contracts expire on September 30 in the last year of the contract.

(h) Participants must:

(1) Implement the conservation stewardship contract approved by NRCS;

(2) Make available to NRCS, appropriate records showing the timely implementation of the contract;

(3) Comply with the regulations of this part; and

(4) Not engage in any activity that interferes with the purposes of the program, as determined by NRCS.

(i) NRCS will determine the payments under the contract as described in § 1469.23.

(j) For contracts encompassing the entire agricultural operation, the geographic boundaries of the acreage enrolled in the contract must include all fields and facilities under the participant's direct control, as determined by NRCS.

§ 1469.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract.

(b) The participant must operate and maintain any new conservation practice(s) for which a payment was received to ensure that the new practice or enhancement achieves its intended purpose for the life span of the conservation treatment, as identified in the contract or conservation stewardship plan, as determined by NRCS.

(c) Conservation practices that are installed before the execution of a contract, but are needed in the contract to obtain the intended environmental benefits, must be operated and maintained as specified in the contract whether or not an existing practice payment is made.

(d) NRCS may periodically inspect the conservation practices during the practice lifespan as specified in the contract to ensure that operation and maintenance are being carried out, and that the practice is fulfilling its intended objectives. When NRCS finds that a participant is not operating and maintaining practices installed through the CSP in an appropriate manner, NRCS will initiate contract violation procedures as specified in § 1469.25. If an existing practice is part of a system that meets the quality criteria, but does not technically meet NRCS minimum practice standards, the practice must be modified or updated to meet the standard according the FOTG as specified in § 1469.25(a) of this part.

§ 1469.23 Program payments.

(a) *Stewardship component of CSP payments.* (1) The conservation stewardship plan, as applicable, divides the land area to be enrolled in the CSP into land use categories, such as irrigated and non-irrigated cropland, irrigated and non-irrigated pasture, pastured cropland and range land, among other categories.

(2) NRCS will determine an appropriate stewardship payment rate for each land use category using the following methodology:

(i) NRCS will initially calculate the average 2001 rates using the Agriculture Foreign Investment Disclosure Act (AFIDA) Land Value Survey, the National Agriculture Statistics Service (NASS) land rental data, and Conservation Reserve Program (CRP) rental rates.

(ii) Where typical rental rates for a given land use vary widely within a State or between adjacent States, NRCS will adjust the county-level rates to ensure local and regional consistency and equity.

(iii) The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The final stewardship payment rate will be the adjusted regional rates described in paragraph (a)(2)(i) through (iii) of this section multiplied by a reduction factor of 0.25 for Tier I, 0.50 for Tier II, and 0.75 for Tier III.

(v) Pastured cropland will receive the same stewardship payment as cropland.

(3) NRCS will compute the stewardship component of the CSP payment as the product of: the number of acres in each land use category (not including ''other'' or land not in the applicant's control); the corresponding stewardship payment rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II payments, and 15 percent for Tier III payments.

(4) Other incidental parcels as defined in § 1469.5(d)(1)(iv) may be given a stewardship rate as though they were the land use to which they are contiguous if they are serving a conservation purpose, such as wildlife habitat. Payment is limited to not more than ten percent of the contract acres. Minimum treatment requirements for the contract tier apply.

(5) Other land, as defined in § 1469.5(d)(1)(v), is not included in the stewardship payment computation.

(6) NRCS will publish the stewardship payment rates at the announcement of each program sign-up.

(b) *Existing practice component of CSP payments.* (1) The Chief will determine and announce which practices will be eligible for existing practice payments in accordance with § 1469.8(a).

(2) With exceptions including, but not limited to, paragraph (b)(3) and (4) of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. The Chief may offer alternative payment methods such as paying a percentage of the stewardship payment as long as the payment will not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the rates for payment at the time of the sign-up notices on the NRCS website and in USDA Service Centers.

(3) NRCS will not pay for maintenance of equipment.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is required to meet conservation compliance requirements found in 7 CFR Part 12.

(5) Existing practice payments are not intended to pay for routine maintenance activities related to production practices or practices considered typical in farm and ranch operations for a specific location.

(6) Existing practice payments will be made only on practices that meet or exceed the practice standards described in the FOTG.

(7) The Chief may reduce the rates in any given sign-up notice.

(c) *New practice payments.* (1) The Chief will determine and announce which practices will be eligible for new practice payments in accordance with § 1469.8(a).

(2) If the conservation stewardship contract requires the implementation of a new structural or land management practice, NRCS may pay a percentage of the cost of installing the new practice. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up notice.

(3) Participants may contribute to their share of the cost of installing a new

practice through in-kind sources, such as personal labor, use of personal equipment, or donated materials. Contributions for a participant's share of the practice may also be provided from non-Federal sources, as determined by the Chief.

(4) Cost-share payments may be provided by other programs; except that payments may not be provided through CSP and another program for the same practice on the same land area.

(5) If additional practices are installed or implemented to advance a contract from one tier of participation to a higher tier, the practice must be certified as meeting FOTG practice standards by NRCS.

(6) In no instance will the total financial contributions for installing a practice from all public and private entity sources exceed 100 percent of the actual cost of installing the practice.

(7) NRCS will not pay a new practice payment for any practice that is required to meet the conservation compliance plan requirements found in 7 CFR Part 12.

(8) The Chief may reduce the rates in any given sign-up notice.

(d) *Enhancement component of CSP payments.* (1) The Chief will establish a list of conservation practices and activities that are eligible for enhancement payments for a given sign-up. State Conservationists, with advice from the State Technical Committees, will tailor the list to meet the needs of the selected watersheds and submit to the Chief for concurrence.

(2) NRCS may pay an enhancement component of a CSP payment if a conservation stewardship plan demonstrates to the satisfaction of NRCS that the plan's activities will increase conservation performance including activities related to energy management as a result of additional effort by the participant and result in:

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the contract's Tier of participation as outlined in the sign-up notice and as described in § 1469.5(e) and the contract requirements in § 1469.21; or

(ii) An improvement in a local resource concern based on local priorities and in addition to the national significant resource concerns, as determined by NRCS.

(3) NRCS may also pay an enhancement component of a CSP payment if a participant:

(i) Participates in an on-farm conservation research, demonstration, or pilot project as outlined in the sign-up notice; or

(ii) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75 percent of the producers in the targeted area; or

(iii) Carries out assessment and evaluation activities relating to practices included in the conservation stewardship plan as outlined in the sign-up notice.

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is required to meet the conservation compliance plan requirements found in 7 CFR Part 12.

(5) *Eligible enhancement payments.* (i) State Conservationists, with advice from the State Technical Committees, will develop proposed enhancement payment amounts for each practice and activity.

(ii) An enhancement payment will be made to encourage a producer to perform or continue a management practice or activity, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project that produces enhanced environmental performance and benefits or produces information and data to improve a resource concern or update the NRCS technical guides. Enhancement payments will be:

(A) For activities where NRCS can demonstrate the economic value of the environmental benefits, based on a given activity's expected environmental benefit value. The payment may not exceed the activity's expected economic value; or

(B) For activities where NRCS cannot demonstrate the economic value of the environmental benefits, a rate that will not exceed a producer's cost to implement a given activity.

(iii) NRCS will post the list of approved enhancement activities and payment amounts for each activity concurrent with the CSP sign-up notice.

(6) The Chief may set a not-to-exceed limit or variable payment rate for the enhancement payment in any given sign-up notice.

(7) Enhancements above the minimum criteria for the resource concern that are included in the benchmark inventory may be included in the first CSP payment.

(e) Contracts will be limited as follows:

(1) $20,000 per year for a Tier I conservation stewardship contract,

(2) $35,000 per year for a Tier II conservation stewardship contract, or

(3) $45,000 per year for a Tier III conservation stewardship contract.

(4) Stewardship components of CSP payments cannot exceed $5,000 per year for Tier I, $10,500 per year for Tier II, or $13,500 per year for Tier III.

(5) The new practice payment will not exceed 50 percent of the average county costs of installing the practice (or a similar practice, if new) in the 2001 crop year with the exception of beginning and limited resource producers, in which case the new practice payment may be up to 65 percent.

(f) The new practice and enhancement components of the conservation stewardship contract payment may increase once the participant applies and agrees to maintain additional conservation practices and activities as described in the conservation stewardship plan.

(g) The Chief of NRCS may limit the stewardship, practice, and enhancement components of CSP payments in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

(h) In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year.

(i) NRCS may not make any payments to participants for:

(1) Practices within their conservation stewardship plan that are required to meet conservation compliance requirements found in 7 CFR Part 12;

(2) Practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to the conservation stewardship contract approval;

(3) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations;

(4) The purchase or maintenance of equipment;

(5) A non-land based structure that is not integral to a land based practice, as determined by the Chief; or

(6) New practices that were applied with cost-share assistance through other USDA cost-share programs.

§ 1469.24 Contract modifications and transfers of land.

(a) Contracts may be modified:

(1) At the request of the participant, if the modification is consistent with the purposes of the conservation security program, or;

(2) As required by the State Conservationist due to changes to the type, size, management, or other aspect of the agricultural operation that would interfere with achieving the purposes of the program.

(b) Participants may request a modification to their contract to change their tier of participation under a conservation stewardship contract once the measures determined necessary by NRCS to meet the next tier level have been established.

(c) Contract transfers are permitted when there is agreement among all parties to the contract and the contract area remains intact.

(1) NRCS must be notified within 60 days of the transfer of interest and the transferee's acceptance of the contract terms and conditions, or the contract will be terminated.

(2) The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices and activities already undertaken and to be undertaken as a condition of the contract.

§ 1469.25 Contract violations and termination.

(a) If the NRCS determines that a participant is in violation of the terms of a contract, or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If the violation continues, the State Conservationist may terminate the conservation stewardship contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective immediately upon a determination by the State Conservationist that the participant has: submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights for future payments under the contract, and must refund all or part of the payments received, plus interest, and liquidated damages as determined in accordance with part 1403 of this chapter. The State Conservationist may require only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

(e) When making any contract termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract including natural disasters or events.

(f) The participant may voluntarily terminate a contract, without penalty or repayment, if the State Conservationist determines that the contract terms and conditions have been fully complied with before termination of the contract.

(g) In carrying out this section, the State Conservationist may consult with the local conservation district.

Subpart C—General Administration

§ 1469.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract or agreement, and NRCS will ensure that potential participants who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among multiple applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

§ 1469.31 Appeals.

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with parts 11 and 614, Subparts A and C, of this title, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Eligible conservation practices; and,

(3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

§ 1469.32 Compliance with regulatory measures.

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from their performance under the contract.

§ 1469.33 Access to agricultural operation.

Any authorized NRCS representative has the right to enter an agricultural operation for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1469.34 Performance based on advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

§ 1469.35 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any participant without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1469.36 Misrepresentation and scheme or device.

(a) If the Department determines that a participant erroneously represented any fact affecting a CSP determination made in accordance with this part, the participant's conservation stewardship contract will be terminated immediately in accordance with § 1469.25(b). The participant will forfeit all rights for future contract payments, and must refund payments received, plus interest, and liquidated damages as described in § 1469.25.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest, and liquidated damages as determined in accordance with § 1469.25 received by such participant with respect to all contracts. In addition, NRCS will terminate the participant's interest in all conservation stewardship contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

Signed in Washington, DC, on March 18, 2005.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 05–5894 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20514; Directorate Identifier 2005–CE–08–AD; Amendment 39–14025; AD 2005–07–01]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Models C208 and C208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This AD requires you to incorporate information into the applicable section of the Airplane Flight Manual (AFM). This AD results from several accidents/incidents of problems with the affected airplanes during operations in icing conditions, including six accidents in the previous two icing seasons and nine events in the past few months. We are issuing this AD to assure that the pilot has enough information to prevent loss of control of the airplane while in-flight during icing conditions.

DATES: This AD becomes effective on March 29, 2005.

We must receive any comments on this AD by April 30, 2005.

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

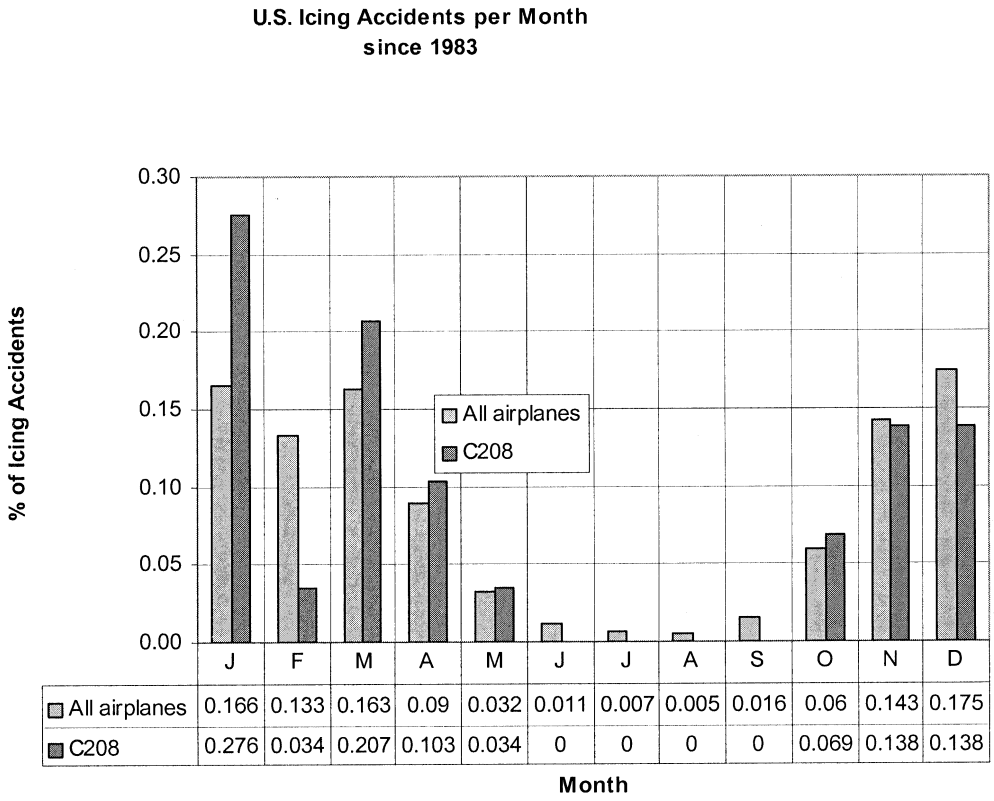
- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *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.
- To get the service information identified in this proposed AD, contact The Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9006.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–20514; Directorate Identifier 2005–CE–08–AD.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta Aircraft Certification Office (ACO), One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

What events have caused this AD? The FAA has received several reports of accidents/incidents concerning problems with Cessna Models C208 and C208B airplanes during operations in icing conditions. This includes a total of six accidents in the previous two icing seasons and nine events in the past few months. Most of the accidents occur on approach and landing. One-third are suspected to be in supercooled large droplets, icing conditions outside the 14 CFR part 25 Appendix C certification envelope. The Cessna Models C208 and C208B are certificated to 14 CFR part 23, but 14 CFR part 23 references 14 CFR part 25 Appendix C for icing certification. The following chart shows the monthly breakdown of the icing accidents/incidents of the affected airplanes:



The information shows that icing accidents/incidents are just as prevalent or more prevalent during the months of March and April than in November, December, and January. Therefore, the next month is critical for the continued operational safety of the Cessna Models C208 and C208B in icing conditions.

What is the potential impact if FAA took no action? If the pilot does not have enough information on flight into icing conditions in the Airplane Flight Manual (AFM), then loss of control of the airplane could occur.

Is there service information that applies to this subject? Cessna has developed revisions to the FAA-approved AFM to address this issue, as follows:

Document	Affects
Temporary Revision 208PHTR04, dated March 2, 2005, to the FAA-approved Airplane Flight Manual.	Cessna Model 208, all models and serial numbers.
Revision 5 of of the 208 (675 SHP) FAA-approved Flight Supplement 1 "Known Icing Equipment", Cessna document D1352–S1–05, dated March 2, 2005.	Cessna Model C208 airplanes with a Pratt & Whitney Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, except airplanes modified by Supplemental Type Manual Certificate SA00892WI.
Revision 5 of of the 208 (600 SHP) FAA-approved Flight Manual Supplement S1 "Known Icing Equipment", Cessna document D1307–S1–05, dated March 2, 2005.	Cessna Model C208 airplanes with a Pratt & Whitney Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower approved installed, except airplanes modified by Supplemental Type Certificate SA00892WI.
Revision 6 of the 208B (675 SHP) FAA-approved Flight Manual Supplement S1 "Known Icing Equipment", Cessna document D1329–S1–06, dated March 2, 2005.	Cessna Model C208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, except airplanes modified by Supplemental Type Certificate SA00892WI.
Revision 5 of the 208B (600 SHP) FAA-approved Flight Manual Supplement S1 "Known Icing Equipment", Cessna document D1309–S1–05, dated March 2, 2005.	Cessna Model C208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, except airplanes modified by Supplemental Type Certificate SA00892WI.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of the same type design.

Since the unsafe condition described previously is likely to exist or develop on other type design Cessna Models C208 and C208B airplanes, we are issuing this AD to assure that the pilot has enough information to prevent loss of control of the airplane while in-flight during icing conditions.

What does this AD require? This AD requires you to incorporate the above-referenced documents into the AFM.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts that influenced our decision. The majority of the respondents supported the dissemination of the information in the revised AFM.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20514; Directorate Identifier 2005–CE–08–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

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

Will this AD involve a significant rule or regulatory action? 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 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 by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–20514; Directorate Identifier 2005–CE–08–AD'' in your request.

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 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 (AD):

2005–07–01 The Cessna Aircraft Company: Amendment 39–14025; Docket No. FAA–2005–20514; Directorate Identifier 2005–CE–08–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on March 29, 2005.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models C208 and C208B, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD results from several accidents/incidents of problems with the affected airplanes during operations in icing condition, including six accidents in the previous two icing seasons and nine events in the past few months. We are issuing this AD to assure that the pilot has enough information to prevent loss of control of the airplane while in-flight during icing conditions.

What Must I Do To Address This Problem?

(e) No later than April 1, 2005 (3 days after March 29, 2005, which is the effective date of this AD), incorporate the following revisions into the Airplane Flight Manual:

Affected airplanes	Incorporate the following AFM revision document	Revise the Performance Section (Section 5) of the AFM Supplement by inserting the following text (this may be done by inserting a copy of this AD in the AFM Supplement)
(1) Cessna Model C208 airplanes and Model C208B airplanes, all serial numbers.	*Section 2: Limitations and Section 4: Normal Procedures:* Temporary Revision 208PHTR04, dated March 2, 2005, to the Pilots Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM), except replace the Limitations (Section 2) of the Temporary Revision 208PHTR04 to the POH/FAA-approved AFM with the Appendix to this AD. (This may be done by inserting a copy of this AD into the POH/AFM.).	None.
(2) Cessna Model C208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, except airplanes modified by Supplemental Type Certificate SA0892WI.	*Section 9: Optional Systems Description and Operating Procedures:* Revision 5 of the 208 (675 SHP) POH/FAA-approved AFM Supplement S1 "Known Icing Equipment" Cessna document D1352–S1–05, dated March 2, 2005.	WARNING: The stall warning system has not been tested in all icing conditions and should not be relied upon in icing conditions.
(3) Cessna Model C208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, except airplanes modified by Supplemental Type Certificate SA00892WI.	*Section 9: Optional Systems Description and Operating Procedures* Revision 5 of the Cessna Model 208 (600 SHP) POH/FAA-approved AFM Supplement S1 "Known Icing Equipment", Cessna document D1307–S1–05, dated March 2, 2005, except incorporate the Appendix to this AD into paragraphs "PREFLIGHT" and "VISUAL/TACTILE CHECK" of the Limitations Section of the POH/FAA-approved AFM Supplement S1 "Known Icing Equipment".	WARNING: The stall warning system has not been tested in all icing conditions and should not be relied upon in icing conditions.
(4) Cessna Model C208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, except airplanes modified by Supplemental Type Certificate SA00892WI.	*Section 9: Optional Systems Description and Operating Procedures* Revision 6 of the 208B (675 SHP) POH/FAA-approved AFM Supplement S1 "Known Icing Equipment", Cessna document D1329–S1–06, dated March 2, 2005.	WARNING: The stall warning system has not been tested in all icing conditions and should not be relied upon in icing conditions.
(5) Cessna Model C208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, except airplanes modified by Supplemental Type Certificate SA00892WI.	*Section 9: Optional Systems Description and Operating Procedures* Revision 5 of the 208B (600 SHP) POH/FAA-approved AFM Supplement S1 "Known Icing Equipment", Cessna document D1309–S1–05, dated March 2, 2005.	WARNING: The stall warning system has not been tested in all icing conditions and should not be relied upon in icing conditions.

(f) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual changes requirement of this AD. Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Staff, Small Airplane Directorate, FAA, c/o Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097. For information on any already approved alternative methods of compliance, contact Paul Pellicano at the address and phone number above.

May I Get Copies of the Document Referenced in this AD?

(h) You may obtain the service information referenced in this AD from The Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9006. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–20048; Directorate Identifier 2005–CE–08–AD.

Appendix to AD 2005–07–01, Amendment 39–14025

[Docket No. FAA–2005–20514; Directorate Identifier 2005–CE–08–AD]

Preflight

Takeoff is prohibited with any frost, ice, snow, or slush adhering to the wings, horizontal stabilizer, control surfaces, propeller blades, and engine inlets.

Warning

Even small amounts of frost, ice, and snow, or slush on the wing may adversely change lift and drag. Failure to remove these contaminants will degrade airplane performance and may prevent a safe takeoff and climbout.

Visual/Tactile Check

In addition to a visual check, a tactile check of the wing leading edge, wing upper surface (up to two feet behind the deicing boot at on-span location as a minimum), horizontal tail leading edge, and propeller

blades is required if the outside air temperature (OAT) is below 5° C (41° F) and visible moisture (rain, drizzle, sleet, snow, fog etc.) is present or the airplane was exposed to visible moisture (rain, drizzle, sleet, snow, fog etc.) since the previous landing; or the airplane experienced in-flight ice accretion since the previous takeoff; or the difference between the dew point temperature and the OAT is 3° C (5° F) or less; or water is present on the wing. Reference the preflight procedures in Section 4 of the basic Pilot's Operating Handbook.

Issued in Kansas City, Missouri, on March 21, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5915 Filed 3–24–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AD67

Technical Amendments To Change Cross-References

AGENCY: Social Security Administration.

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects two cross-references in the final rules we published in the **Federal Register** on November 15, 2004 (69 FR 67017). These final rules revised the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving malignant neoplastic diseases.

EFFECTIVE DATE: Effective on March 25, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 965–1769 or TTY 1–800–325–0778 for information about these correcting amendments. For information on eligibility or filing for benefits, call our national toll-free number 1–(800) 772–1213 or TTY 1–(800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION: We are making two corrections to listing 13.00 in appendix 1 of subpart P of part 404 of our regulations that was published in the **Federal Register** on November 15, 2004 (69 FR 67017). The first correction revises the cross-reference in the last sentence of listing 13.00K1b. The second correction revises the cross-references in the heading of listing 13.02.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: March 21, 2005.

Martin Sussman,

Regulations Officer.

■ For the reasons set out in the preamble, subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

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

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

■ 2. Amend Appendix 1 to subpart P as follows:

■ a. In Listing 13.00K1b, revise the reference ''13.55A2a'' in the last sentence to read ''13.05A2.''

■ b. In the heading of Listing 13.02, revise the references to ''13.06'' and ''13.07'' to read ''13.08'' and ''13.09,'' respectively.

[FR Doc. 05–5921 Filed 3–24–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9187]

RIN 1545–BA52

Loss Limitation Rules; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects final regulations (TD 9187) that were published in the **Federal Register** on Thursday, March 3, 2005 (70 FR 10319), that disallows certain losses recognized on sales of subsidiary stock by members of a consolidated group.

DATES: This correction is effective on April 4, 2005.

FOR FURTHER INFORMATION CONTACT: Theresa Abell, (202) 622–7700 or Martin Huck, (202) 622–7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9187) that is the subject of this correction is under sections 337(d) and 1502 of the Internal Revenue Code.

Need for Correction

As published, (TD 9187) contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 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 * * *

§ 1.1502–20 [Corrected]

Section 1.1502–20(i)(3)(viii), second sentence, the language ''Any reapportionment of a section 382 limitation made pursuant to the previous sentence shall have the effects described in paragraphs (i)(3)(iii)(D)(*ii*) and (*iii*) of this section.'' is removed and the language ''Any reapportionment of a section 382 limitation made pursuant to the previous sentence shall have the effects described in paragraph (i)(3), (iii)(D)(*2*) and (*3*) of this section.'' is added in its place.

Cynthia E. Grigsby,

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

[FR Doc. 05–5969 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Army Danger Zone; Salt River, Rolling Fork River, and Otter Creek; U.S. Army Garrison, Fort Knox Military Reservation; Fort Knox, KY

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending its regulations to establish a danger zone on navigable portions of the Salt River and the Rolling Fork River and the non-navigable portions of Otter Creek, within the installation boundaries of the Fort Knox Military Reservation. These regulations will enable the Army to prohibit public access to the area and enhance safety and security within active military impact and training areas.

The Salt River passes through an active military area. Unexploded ordnance (UXO) from military weapons firing is located within the areas along the river and a multi-purpose digital training range is under construction in this area. The Salt River is also used for river training activities. Training and military weapons firing activities occur approximately 320 days per year in this area. The Rolling Fork River passes through the center of the Yano Multi-purpose Training Range. Weapons firing from artillery, M1A2 Abrams Tanks, Bradley Fighting Vehicles, helicopters, and other weapons systems occur approximately 320 days of each year. Otter Creek runs through the installation. Otter Creek travels through Training Areas 8, 9, and 10. These areas are used to train soldiers for combat operation training on M1A2 Abrams Tanks and Bradley Fighting Vehicles. Artillery simulators and other explosive devices are used for these training activities, presenting a risk to civilians entering the area. These regulations are necessary to protect the public from potentially hazardous conditions that may exist as a result of Army use and security of the area. The regulations will also safeguard government personnel and property from sabotage and other subversive acts, accidents, or incidents of similar nature.

DATES: This rule is effective April 25, 2005.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Olson, Headquarters Regulatory Branch, Washington, DC at (202) 761–4922, or Ms. Amy S. Babey, Corps of Engineers, Louisville District, at (502) 315–6691.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the danger zone regulations in 33 CFR part 334 by adding Section 334.855, which establishes a danger zone in the navigable portions of Salt River and Rolling Fork River, and non-navigable portions of Otter Creek, within the Ft. Knox Military Reservation installation boundaries. To better protect the Army, personnel stationed at the facility, and the general public, the Army requested the Corps of Engineers establish a Danger Zone. This would enable the Army to keep persons and vessels out of the area at all times, except with the permission of the Commanding General, U.S. Army Garrison, Ft. Knox Military Reservation, Fort Knox, Kentucky, or his/her authorized representative.

Procedural Requirements

a. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the establishment of this danger zone would have minimal impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and therefore certifies that this rule would have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Louisville District has prepared an Environmental Assessment (EA) for this action. Due to the minor nature of the additional danger zone regulations, the Corps has concluded that this action would not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement is not required. The EA may be reviewed by contacting the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments would not be significantly and uniquely affected by this rulemaking.

e. Submission to Congress and the General Accounting Office

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedures Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Navigation (water), Restricted areas, Waterways.

■ For the reasons stated in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3)

■ 2. Add § 334.855 to read as follows:

§ 334.855 Salt River, Rolling Fork River, Otter Creek; U.S. Army Garrison, Fort Knox Military Reservation; Fort Knox, Kentucky; Danger Zone.

(a) *The area.* Salt River from Point A (latitude 37°59′31.72″ N; longitude 85°55′32.98″ W) located approximately 1.2 miles southeast of West Point, Kentucky; southward to its confluence with the Rolling Fork River. Salt River from Point B (latitude 37°57′51.32″ N; longitude 85°45′37.14″ W) located approximately 2.8 miles southwest of Shepherdsville, Kentucky; southward to its confluence with the Rolling Fork River. Rolling Fork River from Point C (latitude 37°49′59.27″ N; longitude 85°45′37.74″ W) located approximately 1.6 miles southwest of Lebanon

Junction, Kentucky northward to its confluence with the Salt River. Otter Creek from Point D (latitude 37°51′31.77″ N; longitude 86°00′03.79″ W) located approximately 3.4 miles north of Vine Grove, Kentucky to Point E (latitude 37°55′21.95″ N; longitude 86°01′47.38″ W) located approximately 2.3 miles southwest of Muldraugh.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Army authority, vessels of the United States Coast Guard, and federal, local or state law enforcement vessels, are prohibited from entering the danger zones without permission from the Commanding General, U.S. Army Garrison, Fort Knox Military Reservation, Fort Knox, Kentucky or his/her authorized representative.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding General, U.S. Army Garrison, Fort Knox Military Reservation, Fort Knox, Kentucky and/or other persons or agencies as he/she may designate.

Dated: March 16, 2005.

Michael B. White,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 05–5904 Filed 3–24–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 482, 483, and 485

[CMS–3145–IFC]

RIN 0938–AN36

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities; Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period adopts the substance of the April 15, 2004 temporary interim amendment (TIA) 00–1 (101), *Alcohol Based Hand Rub Solutions*, an amendment to the 2000 edition of the Life Safety Code, published by the National Fire Protection Association (NFPA). This amendment will allow certain health care facilities to place alcohol-based hand rub dispensers in egress corridors under specified conditions. This interim final rule with comment period also requires that nursing facilities install smoke detectors in resident rooms and public areas if they do not have a sprinkler system installed throughout the facility or a hard-wired smoke detection system in those areas.

DATES: *Effective date:* These regulations are effective on May 24, 2005.

Comments date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 24, 2005.

ADDRESSES: In commenting, please refer to file code CMS–3145–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3145–IFC, P.O. Box 8018, Baltimore, MD 21244–8018.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Danielle Shearer, (410) 786–6617; James Merrill, (410) 786–6998; or Mayer Zimmerman, (410) 786–6839.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–3145–IFC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

I. Background

A. Alcohol-Based Hand Rubs (ABHR)

The Life Safety Code (LSC) is a compilation of fire safety requirements for new and existing buildings that is updated and generally published every 3 years by the National Fire Protection Association (NFPA), a private, nonprofit organization dedicated to reducing loss of life due to fire. The Medicare and Medicaid regulations have historically incorporated these requirements by reference, while providing the opportunity for a Secretarial waiver of a requirement under certain circumstances. The statutory basis for incorporating NFPA's LSC for our providers is under the Secretary's general rulemaking authority at sections 1102 and 1871 of the Social Security Act.

On January 10, 2003, we published a final rule in the **Federal Register**, entitled ''Fire Safety Requirements for Certain Health Care Facilities'' (68 FR

1374). In that final rule, we adopted the 2000 edition of the LSC provisions governing Medicare and Medicaid health care facilities. The Office of the Federal Register's rules regarding incorporation by reference state that the document so incorporated is the one referred to as it exists on the date of publication of the final rule. Among other things, the 2000 edition of the LSC prohibited the placement of accelerants, including alcohol-based hand rub (ABHR) dispensers, in egress corridors, but allowed their placement in patient rooms and other appropriate areas. We did not receive any public comments contesting this prohibition during the rulemaking process.

[If you choose to comment on issues in this section, please include the caption ''ABHR RESEARCH'' at the beginning of your comments.]

The ABHRs have become an increasingly common infection control method. The issue of infection control has been a concern identified in numerous research studies and reports. The Centers for Disease Control and Prevention (CDC) reports that there are more than 2 million health care acquired infections per year (*http://www.cdc.gov/handhygiene/firesafety/aha_meeting.htm*). Many of the microorganisms that cause these infections are transmitted to patients because health care workers do not wash their hands or do so improperly or inadequately. Improving hand hygiene is an important step towards reducing the number of health care acquired infections. In October 2002, the CDC posted hand hygiene guidelines for health care settings on its website (*http://www.cdc.gov/handhygiene/firesafety/default.htm*). The guidelines clearly recommended the use of ABHRs. The CDC stated that—

- Compared with soap and water hand washing, ABHRs are more effective in reducing bacteria on hands, cause less skin irritation/dermatitis, and save personnel time;
- Use of ABHRs has been associated with improved adherence to recommended hand hygiene practices;
- Adherence is directly tied to access. The highest possible adherence to hand hygiene practice is achieved when ABHR dispensers are in readily accessible locations such as the corridor near the patient room entrance and inside patient rooms; and
- Improved hand hygiene practices have been associated with reduced health care-associated infection rates.

Research from a variety of sources confirms the CDC's research and statements about the usefulness and effectiveness of ABHRs in health care facilities. For example, the study ''Improving adherence to hand hygiene practice: A multidisciplinary approach'' (Pittet D. Emerging Infectious Diseases. 2001 March–April; 7(2):243–40. Review) concludes that, ''[a]lcohol-based hand rub, compared with traditional handwashing with unmedicated soap and water or medicated hand antiseptic agents, may be better because it requires less time, acts faster, and irritates hands less often.''

The same study goes on to state that, ''[t]his method was used in the only program that reported a sustained improvement in hand hygiene compliance with decreased infection rates.'' The relationship between ABHRs and improved adherence to recommended hand hygiene practices is also found in other studies, including ''Availability of an alcohol solution can improve hand disinfection compliance in an intensive care unit'' (Maury E, *et al.* American Journal of Respiratory and Critical Care Medicine, 2000; 162:324–327). This study saw compliance with hand hygiene practice rates rise from 42.4 percent before the introduction of ABHRs to 60.9 percent after the introduction of ABHRs. Each category of health care provider, from nurses to physicians, and even patients increased compliance with hand hygiene practices.

Another study, ''Effectiveness of a hospital-wide programme to improve compliance with hand hygiene'' (Pittet D, Hugonnet S, Harbarth S, *et al.* Lancet 356. 2000; 1307–1312), also demonstrated an increase in compliance with hand hygiene practices that was directly related to the use of ABHRs. In this study, compliance rates rose from 47.6 percent to 66.2 percent over a 3-year period. Handwashing rates remained stable at 30 percent during this period while hand disinfection rates rose from 13.6 percent to 37.0 percent. During this time, the annual amount of ABHR use increased from 3.5L per 1,000 patients to 10.9L per 1,000 patients. The increase in hand disinfection through ABHRs and related increase in compliance with hand hygiene practices are directly tied to the increased availability and use of ABHRs.

An important aspect of getting health care workers and others to use ABHRs is their accessibility. In the study ''Handwashing compliance by health care workers: The impact of introducing an accessible, alcohol-based antiseptic'' (Bischoff WE, *et al.* Archives of Internal Medicine, 2000; 160: 1017–1021), researchers assessed how the accessibility of ABHRs impacted their use. The researchers found that when one ABHR dispenser was available for every four patient beds the adherence rate for hand hygiene was 19 percent before patient contact and 41 percent after patient contact. When one ABHR dispenser was available for each bed, the rates rise to 23 percent before patient contact and 48 percent after patient contact. Increased availability of ABHR dispensers resulted in increased hand hygiene rates.

The relationship between increased availability and increased use is likely the result of several factors. An increase in the number of ABHR dispensers acts as a continuous reminder to workers and others that they need to disinfect their hands. For example, each time an individual approaches a patient area, he or she may see, right next to the door, an ABHR dispenser. The dispenser reminds an individual to disinfect his or her hands. In addition to reminding an individual, the location of ABHR dispensers in obvious and highly visible locations serves as a convenient way to disinfect hands. Rather than repeatedly walking to a sink located in another area, a worker can use the ABHR as he or she enters a patient's room as well as while inside the room. Easy and immediate access to ABHR dispensers is a key element in improving adherence to hand hygiene practices.

Improving hand hygiene has a direct effect on the number of health care acquired infections. Following the introduction of ABHRs in one hospital, there was a reduction in the proportion of methicillin-resistant S. aureus infections for each of the quarters of 2000–2001, when ABHRs were utilized, compared with 1999–2000, when ABHRs were not utilized. There was also a 17.4 percent reduction in the incidence of Clostridium difficile-associated disease from 11.5 cases per 1,000 admissions before the introduction of ABHRs to 9.5 cases per 1000 admissions after the introduction of ABHRs (Gopal Rao G, Jeanes A, Osman M, *et al.* Marketing hand hygiene in hospitals: A case study. Journal of Hospital Infection 2002; 50:42–47).

[If you choose to comment on issues in this section, please include the caption ''ABHR SAFETY'' at the beginning of your comments.]

The benefits of using ABHRs have been well demonstrated. However, until a short time ago there were concerns about placing ABHR dispensers in egress corridors. The ABHRs are most commonly found in a gel form contained in a single use disposable bag that is inserted into a wall-mounted dispenser, similar in appearance to wall-mounted hand soap dispensers. The dispenser compresses the bag to

dispense the gel. During normal operation and replacement, the dispenser remains a closed system, meaning that vapors are not released into the atmosphere. In addition, refilling is done using single-use disposable bags rather than large bulk containers. The relatively small quantity of gel in each dispenser combined with the absence of vapor release means that these dispensers, when properly installed and used, pose little fire risk in health care facilities.

In July 2003, the American Hospital Association (AHA), in conjunction with the CDC, held a stakeholder meeting with representatives from more than 20 governmental and non-governmental agencies, including CMS, to discuss the issue of the placement and use of ABHRs. During the meeting, the AHA presented a fire modeling study that was conducted by Gage-Babcock & Associates, Inc. on behalf of the AHA's sister organization, the American Society for Healthcare Engineering (ASHE). This study demonstrated that placing ABHR dispensers in egress corridors is safe, provided that certain conditions are met *(http://www.hospitalconnect.com/ashe/currentevent/alcohol_based_hand_rub/Final_Report_rev1.2_Part_1_2.pdf).*

In February 2004, the ASHE submitted and received approval for temporary interim amendment (TIA) 00–1 (101), *Alcohol-Based Hand Rub Solutions,* to amend the 2003 edition of the LSC. This TIA permitted the placement of ABHR dispensers in egress corridors if certain criteria are met. During a meeting of the NFPA's Standards Council on April 15, 2004, TIA 00–1 (101) was approved for the 2003 edition of the LSC. The TIA was also approved for the 2000 edition of the LSC (the edition CMS adopted). The TIA altered chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC. The change became effective May 5, 2004.

Normally, when the NFPA amends the LSC, it amends the most recently published edition of the code. The most recently published edition is the 2003 edition. However, when the NFPA amended the LSC this time, it retroactively amended the 2000 edition of the LSC in addition to the 2003 edition of the LSC. This is the first time that the NFPA ever retroactively adopted an amendment for an earlier edition of the LSC.

We are adopting the amendment to chapters 18 and 19 of the 2000 edition of the LSC, specifically the changes to chapters 18.3.2.7 and 19.3.2.7. Adopting the amended chapters will allow health care facilities to place ABHR dispensers in egress corridors. We are not adopting the entire revised 2000 edition of the LSC. Anything in the non-amended version of the 2000 edition of the LSC that is contrary to the amended policy will not apply.

Chapters 18 and 19 will apply to hospitals, long-term care facilities, religious non-medical health care institutions, hospices, programs of all-inclusive care for the elderly, hospitals, intermediate care facilities for the mentally retarded, and critical access hospitals.

Ambulatory surgical centers (ASC) are not covered under chapters 18 or 19 of the LSC; but are rather covered under chapter 21 of the LSC. Many ASCs are interested in installing ABHR dispensers in corridors. However, chapter 21 of the LSC has not been amended thus far to permit the installation of ABHR dispensers in egress corridors in ASCs. We are allowing ASCs to install ABHR dispensers in egress corridors according to the same conditions identified for other health care facilities.

We consider a health care facility to be in compliance with our requirements if the placement of ABHR dispensers meets the specified conditions listed in section II.A of this interim final rule with comment period. The ABHR dispensers will also be required to meet the following criteria that are listed in chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC:

- Where dispensers are installed in a corridor, the corridor shall have a minimum width of 6 ft (1.8m).
- The maximum individual dispenser fluid capacity shall be:
  - —0.3 gallons (1.2 liters) for dispensers in rooms, corridors, and areas open to corridors.
  - —0.5 gallons (2.0 liters) for dispensers in suites of rooms.
- The dispensers shall have a minimum horizontal spacing of 4 ft (1.2m) from each other.
- Not more than an aggregate 10 gallons (37.8 liters) of ABHR solution shall be in use in a single smoke compartment outside of a storage cabinet.
- Storage of quantities greater than 5 gallons (18.9 liters) in a single smoke compartment shall meet the requirements of NFPA 30, *Flammable and Combustible Liquids Code.*
- The dispensers shall not be installed over or directly adjacent to an ignition source.
- In locations with carpeted floor coverings, dispensers installed directly over carpeted surfaces shall be permitted only in sprinklered smoke compartments.

After careful and thorough consideration of the numerous studies and recommendations presented above, we believe that placing ABHR dispensers in all appropriate areas, including corridors, is safe and appropriate for patients and providers alike.

B. Smoke Detectors

A recent Government Accountability Office (GAO) report entitled ''Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight'' (GAO–04–660, July 16, 2004, *http://www.gao.gov/new.items/d04660.pdf)* examined two long-term care facility fires in 2003 that resulted in 31 resident deaths. The report examined Federal fire safety standards and enforcement procedures, as well as results from fire investigations of these two incidents. The report recommended that fire safety standards for unsprinklered facilities be strengthened. It specifically cited requiring smoke detectors in these facilities as one way to strengthen the requirements.

The fires, in Hartford, Connecticut and Nashville, Tennessee, had several things in common. Each fire began in a resident sleeping room at night, neither of those rooms had a smoke detector, and the majority of victims died from smoke inhalation. The lack of smoke detectors in resident rooms, the report concludes, ''* * * may have delayed staff response and activation of the buildings' fire alarms.''

Relying on an effective and timely staff response is a crucial aspect of the current facility fire safety requirements. Long-term care facilities are required by the LSC (chapters 18.7.1.1 and 19.7.1.1) to have an emergency plan that will be implemented in the event of a fire at the facility. As part of this plan, staff members at Medicare-approved facilities are typically expected to do things such as close resident room doors, turn off fans and other air circulation devices, and evacuate residents.

However, battery-operated smoke detectors, a basic fire safety device, are only required by the 2000 edition of the Life Safety Code to be installed in existing non-sprinklered resident rooms when those rooms contain furniture that the resident has brought from his or her home. This was not the case in either fire; therefore, smoke detectors were not in the resident sleeping rooms where the fires started and staff members were not aware of the fires until smoke reached the smoke detectors in the

corridors. This delay inhibited timely staff response and may have contributed to resident deaths.

While resident rooms are the leading area of fire origin, fires can and do originate in other areas. For example, a fire could originate in an unoccupied resident activity room. As with resident sleeping rooms, there is a possibility that no one will be aware of this fire until its smoke spread to a corridor where there are smoke detectors. By this time, smoke may have also begun filtering into other areas of the facility such as resident sleeping rooms and public areas that are occupied, thus harming those residents. In order to alert staff and residents in the earliest stages of a fire, we believe that it is necessary to install smoke detectors in resident sleeping rooms and public areas. For these reasons, we are requiring that long-term care facilities that do not have sprinklers must at least install battery-operated smoke detectors in patient rooms and public areas. We have discussed this issue in detail in section II.B of this interim final rule with comment period.

We are specifically soliciting public comment on the placement of smoke detectors in long-term care facilities. Should detectors also be placed in non-public areas such as storage rooms, closets, and offices?

Facilities that choose to install a hard-wired smoke detector system in accordance with NFPA 72, *National Fire Alarm Code,* in patient rooms and public areas within the 1 year phase-in period discussed in section II.B of this interim final rule with comment period will be exempt from this requirement. A hard-wired smoke detector system is a system that is wired to both a facility's electrical and fire alarm systems. The detectors draw their energy from a facility's electrical system and use batteries as back-ups in case of power failure. In addition, the detectors communicate with one another so that an alarm in one room would trigger an alarm in every room. The detectors also communicate with the facility's fire alarm system, thus notifying the fire department of the situation. If a facility chose to install a hard-wired system in resident rooms and public areas, then it will not have to install battery-operated smoke detectors because such a system will exceed the requirements of this interim final rule with comment period. Facilities that have installed sprinkler systems throughout in accordance with NFPA 13, *Automatic Sprinklers,* will also be exempt from the proposed requirement to install smoke detectors, because such a system will exceed this requirement.

C. 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. We intend to publish the final rule within the 3-year timeframe established under section 902 of the MMA.

II. Provisions of the Interim Final Rule

A. Alcohol-Based Hand Rubs

[If you choose to comment on issues in this section, please include the caption ''PLACEMENT REQUIREMENTS'' at the beginning of your comments.]

For the reasons specified in the preamble, in sections I.A. and I.B. above, we are modifying the conditions of participation for the following facilities:

—Religious non-medical health care institutions (RNHCI) (new § 403.744(a)(4)).
—Ambulatory Surgical Services (ASC) (new § 416.44(b)(5)).
—Hospices (new § 418.100(d)(6)).
—Programs of all-inclusive care for the elderly (PACE) (new § 460.72(b)(6)).
—Hospitals (new § 482.41(b)(9)).
—Long-term care (LTC) facilities (new § 483.70(a)(6)).
—Intermediate care facilities for the mentally retarded (ICFs/MR) (revised § 483.470(j)(7)).
—Critical access hospitals (CAHs) (new § 485.623(d)(7)).

The numbering that appears above corresponds to the most recent changes to the Life Safety Code regulations, published in the **Federal Register** as a final rule on August 11, 2004.

Specifically, we are adding a new provision that will allow these facilities to place ABHR dispensers in various locations, including egress corridors, if the facilities met the following conditions:

- The use of ABHR dispensers could not conflict with any State or local codes that prohibit or otherwise restrict the placement of ABHR dispensers in health care facilities. Allowing ABHR dispensers to be installed in egress corridors will be a significant lessening of restrictions. States and/or local jurisdictions may choose to retain stricter codes that prohibit or otherwise restrict the installation of ABHR dispensers in health care facilities. Facilities will still be required to comply with those stricter State and local codes. Therefore, facilities could only install ABHR dispensers if the dispensers were also permitted by State and local codes.
- The dispensers were installed in a manner that minimized leaks and spills that could lead to falls. Like soap, ABHRs are very slick. As such, it is more likely for someone to slip and fall on a surface that is covered by an ABHR solution than on a surface that is clean.

The increased risk of falls posed by the presence of leaky or spilled ABHR dispensers might be compounded by the medical conditions of patients or residents. While a healthy individual may fall and only suffer a bruise, a frail individual may suffer a broken hip. It is the specific safety needs of the patient populations found in hospitals and other health care facilities that necessitates the requirement that facilities take extra steps to ensure that ABHR dispensers do not leak or spill.

In addition to any extra steps such as additional hardware installation, facilities should follow all manufacturer maintenance recommendations for ABHR dispensers. Regular maintenance of dispensers in accordance with the directions of the manufacturer is a crucial step towards ensuring that the dispensers do not leak or spill.

- The dispensers were installed in a manner that adequately protected against access by vulnerable populations, such as residents in psychiatric units. There are certain patient or resident populations, such as residents of dementia wards, who may misuse ABHR solutions, which are both toxic and flammable. As a toxic substance, ABHR solutions are very dangerous if they are ingested, placed in the eyes, or otherwise misused. As a flammable substance, ABHR solutions could be used to start fires that endanger the lives of patients and destroy property.

Due to disability or disease, some patients are more likely to harm themselves or others by misusing ABHR solutions. In order to avoid any and all dangerous situations, a facility will have to take all appropriate precautions to secure the ABHR dispensers from misuse by these vulnerable populations.

- The dispensers were installed in accordance with chapters 18.3.2.7 and

19.3.2.7 of the 2000 edition of the LSC. The revisions to the chapters were thoroughly examined by the NFPA's fire safety experts and are based on the fire modeling study conducted by Gage-Babcock for the ASHE. As noted above, the study demonstrated that ABHR dispensers installed in egress corridors do not increase the risk of fire if certain conditions, as outlined in chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC, are met. The study also showed that if those conditions are not met, there will be an increase in the risk of fire.

B. Smoke Detectors

[If you choose to comment on issues in this section, please include the caption ''LOCATION'' at the beginning of your comments.]

We are requiring in § 483.70(a)(7) that long-term care facilities will, at minimum, be required to install battery-operated smoke detectors in resident sleeping rooms and public areas, unless they have a hard-wired smoke detector system in resident rooms and public areas or a sprinkler system throughout the facility. We are also requiring that facilities that install battery-operated smoke detectors have a program for testing, maintenance, and battery replacement to ensure the reliability of the smoke detectors. Smoke detectors, when properly installed and maintained in resident sleeping rooms and public areas, are a basic, useful and effective fire safety tool.

We believe that at least installing battery-operated smoke detectors will provide earlier warning for facility residents and staff. Fires that originate in these areas will be detected earlier because the detector will be located closer to the fire's origin than if it were only placed in the corridor. Earlier detection, and thus earlier alarm, will allow residents and staff more time to react to the situation and implement the facility's emergency plan. Implementing the emergency plan typically includes notifying the fire department, and this earlier notification will speed the arrival of help. These factors could help to reduce the loss of life in a nursing facility fire.

[If you choose to comment on issues in this section, please include the caption ''MAINTENANCE'' at the beginning of your comments.]

As discussed earlier, a facility will be required to have a program for testing, maintenance, and battery replacement to ensure the reliability of the smoke detectors. Detectors require maintenance every 6 months to 1 year in order to ensure that the batteries are operating at optimum power. A detector with a depleted battery provides no protection. Thus, a regular maintenance program for the detectors is crucial to ensuring that residents and staff are indeed protected. Facilities will be expected to add maintenance of smoke detectors to their existing maintenance schedule.

[If you choose to comment on issues in this section, please include the caption ''1 YEAR PHASE-IN'' at the beginning of your comments.]

We are allowing facilities 1 year to comply with this regulation for two reasons. First, allowing facilities an extra year to comply with this regulation will also give interested facilities additional time to purchase and install a hard-wired smoke detector system or a sprinkler system. Purchasing and installing these systems is more complicated than purchasing and installing battery-operated detectors. Therefore, facilities that wanted to exercise this option would be prohibited from doing so if they were required to comply immediately. The 1-year phase-in will give facilities a chance to purchase and install a more advanced fire and smoke protection system than this regulation requires. We are strongly in favor of facilities taking advantage of this extended compliance period to install more advanced fire protection systems than the battery-operated smoke detectors that are required by this regulation.

Second, some facilities might have difficulty obtaining and installing battery-operated smoke detectors within the typical 60-day period from the date of publication of a final rule to the rule's effective date. Therefore, we are allowing facilities to phase-in smoke detectors over a 1-year period from the effective date of a final regulation. Facilities could use this year to purchase and install battery-operated detectors, or they could do so on an abbreviated schedule. We encourage facilities that choose to install battery-operated smoke detectors to do so as quickly as possible in order to increase fire safety. We believe that this phase-in period will give facilities more flexibility in meeting this requirement.

[If you choose to comment on issues in this section, please include the caption ''EXCEPTIONS'' at the beginning of your comments.]

The regulation will have two exceptions, one for facilities that have hard-wired smoke detection systems and one for facilities that have sprinkler systems. Hard-wired smoke detector systems installed in resident rooms and public areas will protect the same areas as the battery-operated detectors. Therefore, having both hard-wired and battery-operated detectors in these areas will be redundant, unnecessary, and overly burdensome. Facilities may still choose to use battery-operated detectors along with hard-wired detectors as an additional layer of fire protection, but we will not require the facilities to do so in this interim final rule with comment period.

Likewise, having both a sprinkler system throughout and battery-operated smoke detectors in resident rooms and public areas will duplicate fire safety efforts.

Sprinklers are considered to be the best way to protect building occupants in fires. Their response time and their ability to extinguish fires before they become a significant hazard will make battery-operated smoke detectors an unnecessary requirement. Facilities may still choose to use detectors as an additional layer of fire protection beyond sprinklers, but they will not be required to do so in this interim final rule with comment period.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that continuing to prohibit the placement of ABHR dispensers in all appropriate areas, including egress corridors, is contrary to the public interest because ABHRs are a safe and effective method for increasing hand hygiene compliance rates, and their use has been shown to help decrease health care-acquired infections. As the studies and recommendations described in section I.A of this document

demonstrate, ABHRs are a safe and effective method for cleansing hands.

Although ABHR dispensers were once considered to be a fire safety risk when placed in egress corridors, they are no longer considered by fire safety experts to pose a significant risk to patient safety. According to the Gage-Babcock study, ABHR dispensers can be safely installed in egress corridors if they meet certain specifications, such as being placed at least 4 feet apart and not being placed over carpet in an unsprinklered smoke compartment. Fire safety experts believe that dispensers of ABHRs, when installed properly in egress corridors, do not decrease fire safety. We agree with this position.

Any fire safety concerns are, we believe, more than offset by the potential for health care facilities to improve their infection control practices. As the availability of ABHRs increases in a facility, so does the rate of hand hygiene compliance. An increase in hand hygiene compliance rates results in a decrease in health care acquired infections. We believe that the public will benefit from more ABHR dispensers being available in more places because the increased availability of ABHR dispensers will likely decrease the number of health care acquired infections, thus improving public health and safety in health care facilities.

We believe that allowing long-term care facilities to continue to care for residents in buildings that have neither sprinklers nor smoke detectors is contrary to the public interest because buildings that do not at least have smoke detectors present a greater risk of death or injury due to fire. In 2003, 31 long-term care facility residents died in two separate fires in buildings that did not have smoke detectors in patient rooms, where both fires started, or in public areas. Smoke detectors are basic and relatively inexpensive fire safety tools that have been proven to be effective at alerting residents and staff to fire, and that have been in use in homes and other buildings across the country for several decades. They provide early warning to occupants and have saved countless lives. Continuing to allow long-term care facilities that care for residents in buildings lacking smoke detectors risks the safety of all residents and staff in these buildings.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period.

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.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impact 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). We have examined the impact of this interim final rule with comment period, and we have determined that this rule is neither expected to meet the criteria to be considered economically significant, nor do we believe it will meet the criteria for a major rule.

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 small 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, most entities affected by this interim final rule with comment period are considered small businesses according to the Small Business Administration's size standards, with total revenues of $29 million or less in any 1 year (for details, see 65 FR 69432). Individuals and States are not included in the definition of a small entity. According to CMS statistics, nursing facilities, which we require to install smoke detectors in resident rooms and public areas, earned a total of $89.6 billion in 1999 (*http://www.cms.hhs.gov/statistics/nhe/historical/t7.asp*). According to the National Nursing Home Survey: 1999 Summary (*http://www.cdc.gov/nchs/data/series/sr_13/sr13_152.pdf*), there were 18,000 nursing facilities in operation at that time. An average facility at this time thus had revenue of approximately $4,977,778. A facility with revenue 50 percent below this average still earned $2,488,889. In the first year, this interim final rule with comment period will cost, on average, approximately $9,800 per facility. In the following years, this interim final rule with comment period will cost $2,800 annually for maintenance. This amount will be less than one half of one percent of the total revenue for an average- or below-average-revenue facility. Therefore, we certify that this interim final rule with comment period will not have a significant impact on a substantial number of small entities. We are not considering hospitals or other facilities affected by the alcohol-based hand rub regulation in this regulatory flexibility analysis because we do not require those facilities to take any action. We are requiring that, if those facilities choose to install ABHR dispensers in egress corridors, then they will have to do so in accordance with the regulation.

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 603 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. This interim final rule with comment period will not have a significant impact on small rural hospitals because the interim final rule with comment period will not impose requirements on 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 that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This interim final rule with comment period will not have an effect on State, local, or tribal governments, and the private sector costs will not be greater than the $110 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates an interim final rule with comment period (and subsequent final rule) that imposes substantial direct requirement costs on

State and local governments, preempts State law, or otherwise has Federalism implications. This regulation does not have any Federalism implications.

B. Anticipated Effects

1. Alcohol-Based Hand Rubs

This interim final rule with comment period does not require an affected facility to install ABHR dispensers; thus, the facility will not be mandated with a burden associated with this provision of the regulation.

We, however, will require facilities that choose to install ABHR dispensers to do so in accordance with chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC as amended by the TIA. Facilities will have to install them in accordance with the LSC, and in a way that minimized leaks and spills, and access to the dispensers by vulnerable populations. Installing dispensers according to the specifications of the LSC and this regulation may increase installation costs. Facilities that choose to install dispensers are required by this regulation to take additional steps to minimize dispenser leaks and spills. While this regulation does not require a specific method for minimizing leaks and spills, facilities may decide to install additional hardware to ensure compliance with this regulation. Additional hardware, such as a device below the dispenser to catch drips, could increase purchasing and installation costs. The leak and spill minimization requirement is new, therefore we have no data to estimate the cost of the provision. We believe that any additional costs are small when compared to the costs of caring for a frail patient who fell on a slippery, ABHR covered floor.

In addition, the installation of these dispensers in egress corridors was previously prohibited. The requirements for locating dispensers in other areas will not change. Therefore, a facility will not have to relocate or modify existing dispensers to conform to the specifications.

Facilities that choose to install ABHR dispensers in any area, including corridors and patient rooms, are required by the LSC to store large quantities of ABHR solution in a flammable liquids cabinet. Facilities are required to use these cabinets if they choose to store 5 gallons or more of ABHR solution in a single smoke compartment. This LSC requirement helps ensure that large amounts of ABHR solution do not accelerate health care facility fires.

Most hospitals already have these cabinets to store other alcohol products or flammables, and would therefore not need to purchase a special storage container for ABHR solutions. Other facilities that may choose to install ABHR dispensers are typically smaller than hospitals and would not need to store more than five gallons of ABHR solution in a single smoke compartment. A facility with 20 rooms per smoke compartment will likely install 10 ABHR dispensers, for a total of three gallons of ABHR solution per smoke compartment. That same facility would be permitted to keep an additional two gallons of ABHR solution for refilling in that same compartment without using a flammable liquids cabinet. Therefore, we do not believe that this LSC provision will pose a significant burden to facilities that choose to install ABHR dispensers.

Facilities that choose to install ABHR dispensers may expect to see a decrease in health care acquired infections due to an increase in hand hygiene practices by clinicians and non-clinicians. While we cannot quantify the potential benefit of this decrease in infections, we do know that decreasing infection rates lead to better patient care outcomes and decrease patient care costs.

2. Smoke Detectors

The July 2004 GAO report estimated that 20 to 30 percent of long-term care facilities do not have sprinklers throughout the facility and will therefore be subject to the provisions of this regulation. We do not have information on the number of facilities that have a hard-wired smoke detector system in resident rooms and public areas. For the purposes of our analysis, we estimated that 25 percent of long-term care facilities, or 4,200, will be subject to the provisions of this regulation. We estimate that an average long-term care facility in a building that does not have sprinklers has 100 residents in 50 two-person resident sleeping rooms, and that each room will require one battery-operated smoke detector. We estimated that each average facility will require 20 additional detectors for public areas, for a total of 70 detectors per facility. We estimated that the cost of each smoke detector and its installation will be approximately $100. Therefore, an average facility will expect to pay $7,000 to purchase and install battery-operated smoke detectors in resident sleeping rooms and public areas. The total industry cost for purchasing and installing battery-operated smoke detectors in the specified areas will be $29,400,000.

Following installation of battery-operated smoke detectors in the specified areas, a long-term care facility will be required to have a program for testing, maintenance, and battery replacement to ensure the reliability of the smoke detectors. We estimate that a facility will conduct monthly tests of each detector by activating the test button. This will take approximately 5 minutes per smoke detector per test, or 1 hour per smoke detector per year.

In addition, we estimate that a facility will clean each detector and change its batteries two times per year. This will take 15 minutes per smoke detector per cleaning and replacement, or 30 minutes per smoke detector per year. We estimate that the total annual maintenance time per detector will be one 1.5 hours, for total of 105 hours per average facility.

We estimate that the cost for this provision for an average long-term care facility with 70 smoke detectors, based on a maintenance person earning $20 per hour and $5 for batteries per change, is $2,800. The annual industry total for this maintenance provision will thus be $11,760,000.

The total cost for the first year of this regulation, including purchase, installation and maintenance costs, will be $9,800 per average facility, for a total of $41,160,000 industry wide. The cost for the following years of maintenance will be $2,800 per average facility annually, or $11,760,000 industry wide annually.

C. Alternatives Considered

1. Alcohol-Based Hand Rubs

We considered not adopting chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC as amended by the TIA, thereby continuing to prohibit the placement of ABHR dispensers in egress corridors. However, continuing this prohibition was not acceptable for two reasons. First, we want to improve hand hygiene practices in order to reduce health-care-acquired infections. Hand hygiene levels increase when the availability of hygiene stations, such as ABHR dispensers, increase. It is helpful to have these stations in areas that are highly visible and easily accessed, as they are in corridors. Therefore, the potential to increase hand hygiene and thus decrease health care acquired infections by placing ABHR dispensers in all appropriate locations warranted this regulation.

Second, continuing to prohibit ABHR dispensers in egress corridors is contrary to our goal of increasing provider flexibility. We believe that, wherever possible, providers should be allowed the flexibility to meet the needs of their patients/residents in the manner they see fit. Providers are aware of the

hazards posed by infections and have developed many methods for addressing those hazards. The ABHR dispensers are one method, and we believe that providers should be allowed to utilize the ABHR dispensers to the fullest extent within the context of patient safety.

We also considered adopting chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC without the additional requirements. However, the chapters do not address several important areas of patient safety, and we believe that not addressing these areas may put patient safety at risk. The NFPA is dedicated to reducing loss of life due to fires. As such, it concerned itself solely with the fire safety implications of installing ABHR dispensers in egress corridors. Chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC did not address leaks and spills that will result in people slipping and falling, nor did they address the potential for inappropriate use of ABHRs by vulnerable populations such as patients in ICFs/MR or dementia units. Due to disability or illness, these populations require additional protection from substances that are toxic and/or flammable. The ABHRs are both toxic and flammable. Chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC did not address these non-fire safety issues. Therefore, we believe that it is necessary to add other installation requirements in addition to chapters 18.3.2.7 and 19.3.2.7 of the 2000 edition of the LSC.

2. Smoke Detectors

We considered not requiring long-term care facilities to install smoke detectors; however, we believe that installation of the smoke detectors will help save lives. The July 2004 GAO report clearly outlined the role that smoke detectors, one of the most basic and effective fire safety devices available, played in the Nashville and Hartford fires. The report also outlined the wider role that detectors can and should play in long-term care facility fire safety. The positive impact of smoke detectors on resident safety, we believe, warrants their installation.

We also considered requiring long-term care facilities to immediately install battery-operated smoke detectors, rather than allowing facilities to phase them in over a 1-year period. We strongly support a facility's choice to install a fire safety system that exceeds the requirements of this regulation. It would have been extremely difficult for facilities that wanted to install hard-wired smoke detector systems or sprinkler systems to complete their tasks in 60 days. The 1-year phase-in period will allow those facilities more time to complete these systems, which would go beyond what we are requiring in this rule.

In addition, requiring facilities to, at a minimum, install battery-operated smoke detectors in 60 days would have posed a significant time and financial burden to facilities. Had we chosen this option, we would have required facilities to purchase and install a fairly large volume of detectors in a fairly short period of time, 60 days. This may have been very difficult for some facilities due to the initial cost of purchasing and installing the detectors. We estimate that it will cost facilities $7,000 to purchase and install battery-operated smoke detectors. There may be facilities that do not have the full amount of funds immediately available, and therefore would not be able to comply with this regulation within the standard 60-day time period. The 1-year phase-in period allows these facilities to distribute the cost over 12 months, for an average monthly cost of $584. Distributing the cost of smoke detectors over a 1-year period ensures that all facilities are able to afford the cost of complying with this rule.

Furthermore, we considered requiring long-term care facilities to install a hard-wired smoke detector system in accordance with NFPA 72, *National Fire Alarm Code,* for hard-wired alternating current smoke detector systems. This option would have posed a significant burden to some long-term care facilities because of the cost and time associated with purchasing and installing these devices. Hard-wired detectors must be wired directly into the facility's electrical and fire alarm system. We believe that the costs associated with purchasing this system and the time required to install it would have placed this option out of reach for some nursing facilities.

Therefore, we are requiring only the less expensive and less time consuming battery-operated detector. Facilities may still choose to install a hard-wired smoke detector system, and we encourage them to do so. Installation of such a system in patient rooms and public areas will exempt a facility from installing battery-operated detectors in those areas.

Finally, we considered requiring long-term care facilities that do not have sprinklers to install them. We are aware that the NFPA and long-term care industry are carefully examining this issue in light of the recent fires. We are also aware that installing sprinklers in existing facilities is an expensive proposition. We believe that this issue warrants further examination, and are committed to working with NFPA, the long-term care facility industry, and advocates to develop a consensus position. Any new sprinkler requirements would be discussed in a separate regulatory document and would be published in the **Federal Register**. Facilities may still choose to install a sprinkler system throughout the facility in accordance with NFPA 13. Installation of such a system will exempt a facility from installing battery-operated detectors in patient rooms and public areas. We encourage all facilities to fully explore this option, as it provides the highest level of fire protection currently available.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 403

Grant programs—health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 416

Health facilities, Incorporation by reference, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 460

Aged, Health care, Health records, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements

■ For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 403—SPECIAL PROGRAMS AND PROJECTS

■ 1. The authority citation for part 403 is amended to read as follows:

Authority: 42 U.S.C. 1395b–3 and Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart G—Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment

■ 2. Add new paragraphs (a)(3) and (a)(4) to § 403.744 to read as follows:

§ 403.744 Condition of participation: Life safety from fire.

(a) * * *

(3) [Reserved]

(4) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, the RNHCI may place alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this amendment, CMS will publish notice in the **Federal Register** to announce the changes.

* * * * *

PART 416—AMBULATORY SURGICAL SERVICES

■ 3. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

■ 4. Add new paragraph (b)(5) to § 416.44 to read as follows:

§ 416.44 Conditions for coverage-Environment.

* * * * *

(b) * * *

(5) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, an ASC may place alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with the following provisions:

(A) Where dispensers are installed in a corridor, the corridor shall have a minimum width of 6 ft (1.8m);

(B) The maximum individual dispenser fluid capacity shall be:

(1) 0.3 gallons (1.2 liters) for dispensers in rooms, corridors, and areas open to corridors.

(2) 0.5 gallons (2.0 liters) for dispensers in suites of rooms;

(C) The dispensers shall have a minimum horizontal spacing of 4 ft (1.2m) from each other;

(D) Not more than an aggregate 10 gallons (37.8 liters) of ABHR solution shall be in use in a single smoke compartment outside of a storage cabinet;

(E) Storage of quantities greater than 5 gallons (18.9 liters) in a single smoke compartment shall meet the requirements of NFPA 30, *Flammable and Combustible Liquids Code;*

(F) The dispensers shall not be installed over or directly adjacent to an ignition source; and

(G) In locations with carpeted floor coverings, dispensers installed directly over carpeted surfaces shall be permitted only in sprinklered smoke compartments.

* * * * *

PART 418—HOSPICE CARE

■ 5. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Conditions of Participation: Other Services

■ 6. Add a new paragraph (d)(6) to § 418.100 to read as follows:

§ 418.100 Condition of participation: Hospices that provide inpatient care directly.

* * * * *

(d) * * *

(6) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospice may place alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this

amendment, CMS will publish notice in the **Federal Register** to announce the changes.

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PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

■ 7. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).

Subpart E—PACE Administrative Requirements

■ 8. Add a new paragraph (b)(5) to § 460.72 to read as follows:

§ 460.72 Physical environment.

* * * * *

(b) * * *

(5) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a PACE center may install alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this amendment, CMS will publish notice in the **Federal Register** to announce the changes.

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 9. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Basic Hospital Functions

■ 10. Add a new paragraph (b)(9) to § 482.41 to read as follows:

§ 482.41 Condition of participation: Physical environment.

* * * * *

(b) * * *

(9) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospital may install alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this amendment, CMS will publish notice in the **Federal Register** to announce the changes.

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PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 11. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

■ 12. In § 483.70, add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 483.70 Physical environment.

(a) * * *

(6) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a long-term care facility may install alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this amendment, CMS will publish notice in the **Federal Register** to announce the changes.

(7) A long-term care facility must:

(i) Install battery-operated smoke detectors in resident sleeping rooms and public areas by May 24, 2006.

(ii) Have a program for testing, maintenance, and battery replacement to ensure the reliability of the smoke detectors.

(iii) Exception:

(A) The facility has a hard-wired AC smoke detection system in patient rooms and public areas that is installed, tested, and maintained in accordance

with NFPA 72, *National Fire Alarm Code,* for hard-wired AC systems; or

(B) The facility has a sprinkler system throughout that is installed, tested, and maintained in accordance with NFPA 13, *Automatic Sprinklers.*

* * * * *

Subpart I—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

■ 13. Revise paragraph (j)(7) to § 483.470 to read as follows:

§ 483.470 Condition of participation: Physical environment.

* * * * *

(j) * * *

(7) *Facilities that meet the LSC definition of a health care occupancy.* (i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the Life Safety Code if the following requirements are met:

(A) The waiver would not adversely affect the health and safety of the clients.

(B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(ii) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if—

(A) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(B) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(C) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(D) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this amendment, CMS will publish notice in the **Federal Register** to announce the changes.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 14. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

■ 15. Add a new paragraph (d)(7) to § 485.623 to read as follows:

§ 485.623 Condition of participation: Physical plant and environment.

* * * * *

(d) * * *

(7) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a critical access hospital may install alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this amendment, CMS will publish notice in the **Federal Register** to announce the change.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: September 1, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 7, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 05–5919 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI20

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Topeka Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce corrections to the final rule designating critical habitat for the Topeka shiner (*Notropis topeka*), published in the **Federal Register** on July 27, 2004. In the final rule, the map legends incorrectly referred to stream segments as ''proposed'' critical habitat rather than ''designated'' critical habitat, and six transcription errors were included in legal descriptions of critical habitat from Unit 1 (Iowa) and Unit 4 (Minnesota). This document corrects these errors.

DATES: Effective August 26, 2004.

FOR FURTHER INFORMATION CONTACT: Vernon Tabor, Kansas Ecological Services Field Office, 315 Houston Street, Suite E, Manhattan, Kansas 66502 (telephone 785–539–3474; facsimile 785–539–8567). The complete file for this correction document and the rule are available for public inspection, by appointment, during normal business hours at the above address. Copies of the rule, draft economic analysis, and draft environmental assessment are available by writing to the above address or by connecting to the Service

Internet Web site at *http://mountain-prairie.fws.gov/ topekashiner/ch.*

SUPPLEMENTARY INFORMATION: On July 27, 2004, we published a final rule designating critical habitat for the Topeka shiner (*Notropis topeka*), a species of fish native to small streams in the Central Plains Region (69 FR 44736). The map legends on the five maps included in the final rule incorrectly referred to ''proposed critical habitat'' rather than ''designated critical habitat'' and ''not proposed as critical habitat'' rather than ''not designated as critical habitat.'' In addition, the final rule included six transcription errors in legal descriptions of critical habitat from Unit 1 (North Raccoon River Watershed, Iowa) and Unit 4 (Big Sioux River/Rock Rivers Watershed, Minnesota). Finally, Map 4 had one typographical error in the title. We are providing corrected maps and corrected legal coordinates for the description of designated critical habitat for Topeka shiner.

In the final rule, we designated as critical habitat a total of 83 stream segments, representing 1,356 kilometers (836 miles) of stream in the States of Iowa, Minnesota, and Nebraska. We excluded from designation all previously proposed critical habitat in the States of Kansas, Missouri, and South Dakota under authority of sections 3(5)(A) and 4(b)(2) of the Endangered Species Act (Act), and excluded critical habitat from designation on the Fort Riley Military Installation in Kansas under authority of section 4(a)(3) of the Act. The number of stream segments and length of stream channel designated as critical habitat do not change with this correction document, nor do the exclusions provided by the final rule.

List of Subjects in 50 CFR Part 17

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

Regulation Correction

PART 17—[CORRECTED]

■ For reasons set forth in the preamble, 50 CFR part 17 is corrected by making the following correcting amendments:

■ 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 § 17.95 for the ''Topeka Shiner'' amend paragraphs (e)(5)(i) and (ii), by revising ''R35W'' to read ''R36W'' wherever it appears.

■ 3. In § 17.95(e)(5)(x), correct the legal description for Unit 1 to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) * * *

(5) * * *

(x) Reach 6b. West Cedar Creek from its confluence with East Cedar Creek (T87N, R31W, Sec. 31), upstream to a point 2,000 feet west of the east section line of T87N, R31W, Sec. 18.

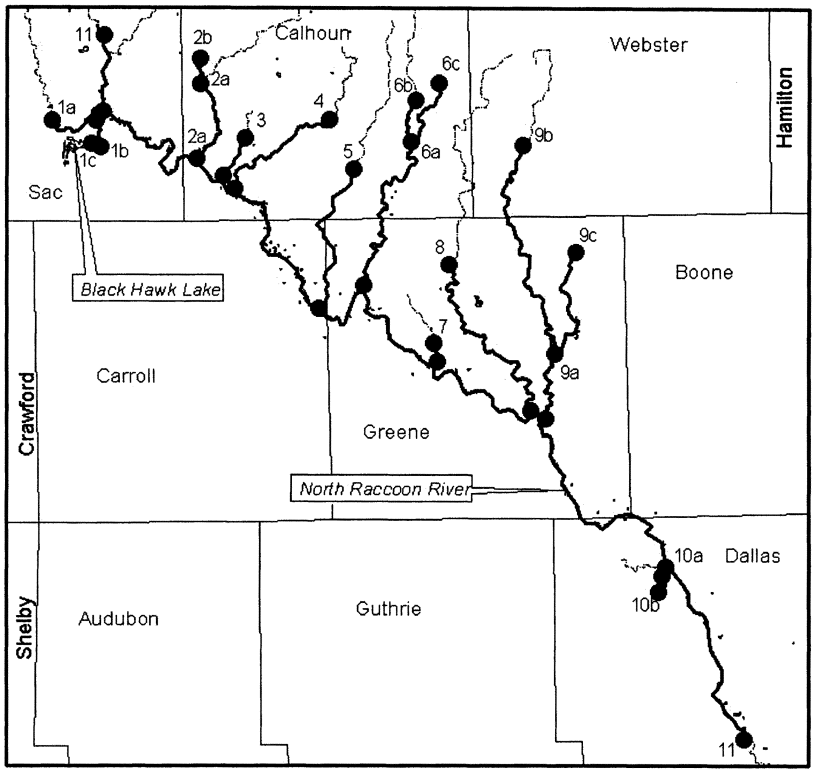
* * * * *

■ 4. In § 17.95(e)(6), revise Map 1 to read as follows:

BILLING CODE 4310–55–P

Map 1: General Locations of Designated Critical Habitat for the Topeka Shiner *(Notropis topeka)*

Iowa - North Raccoon River Watershed



10 0 10 Miles

10 0 10 20 Kilometers

N

Designated Critical Habitat

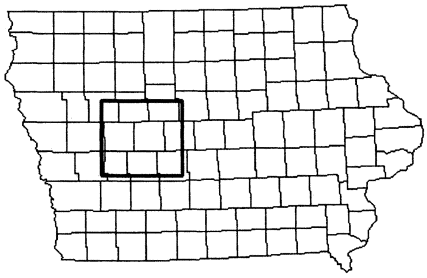
Not Designated as Critical Habitat

County Lines

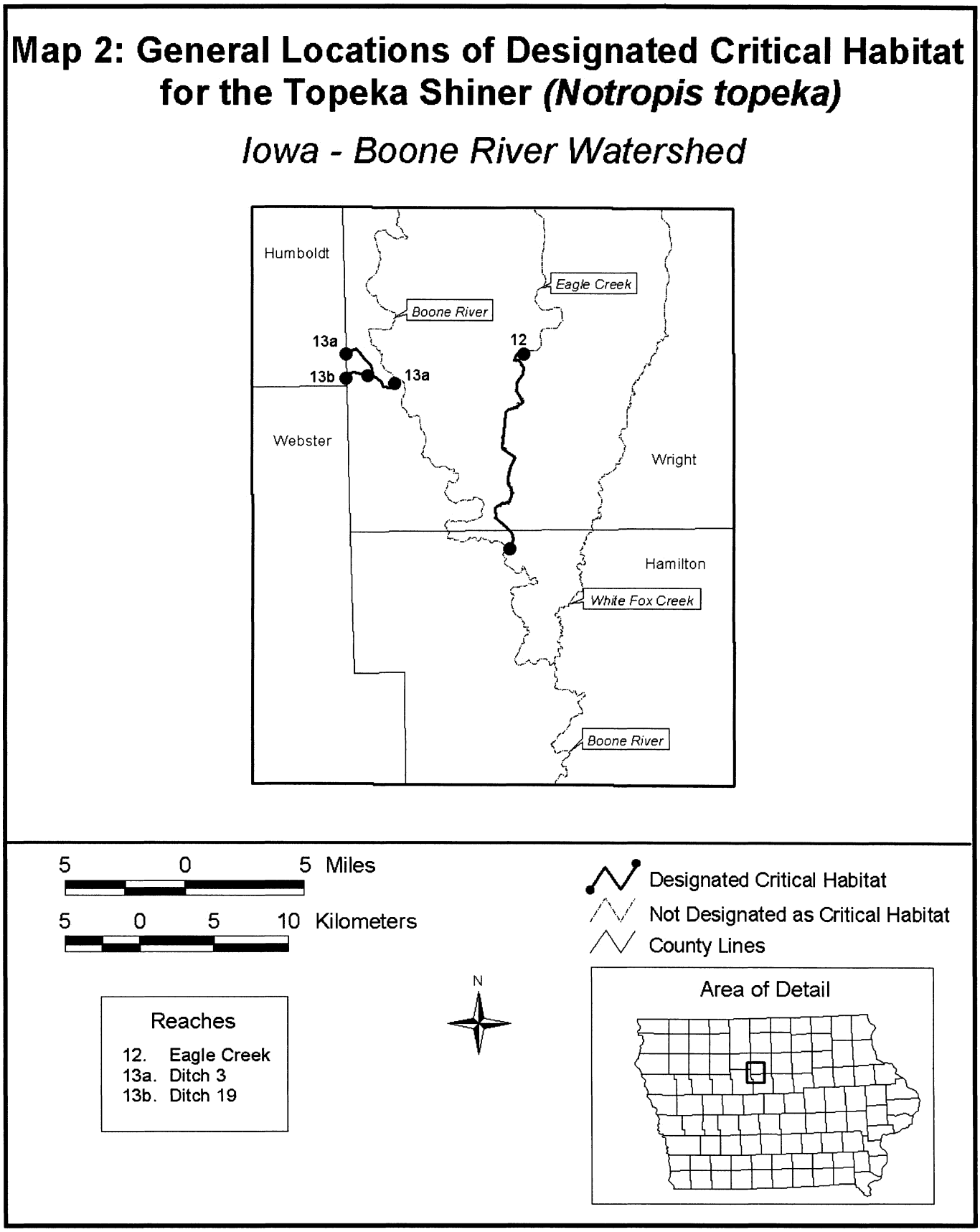
Reaches

1a.	Indian Creek	7.	Short Creek
1b.	Ditch 57	8.	Hardin Creek
1c.	Outlet Creek	9a.	Buttrick Creek
2a.	Camp Creek	9b.	West Buttrick Creek
2b.	West Fork Camp Cr.	9c.	East Buttrick Creek
3.	Prairie Creek	10a.	Elm Branch
4.	Lake Creek	10b.	Swan Lake Branch
5.	Purgatory Creek	11.	Off-channel and side channel pools adjacent to North Raccoon River
6a.	Cedar Creek		
6b.	West Cedar Creek		
6c.	East Cedar Creek		

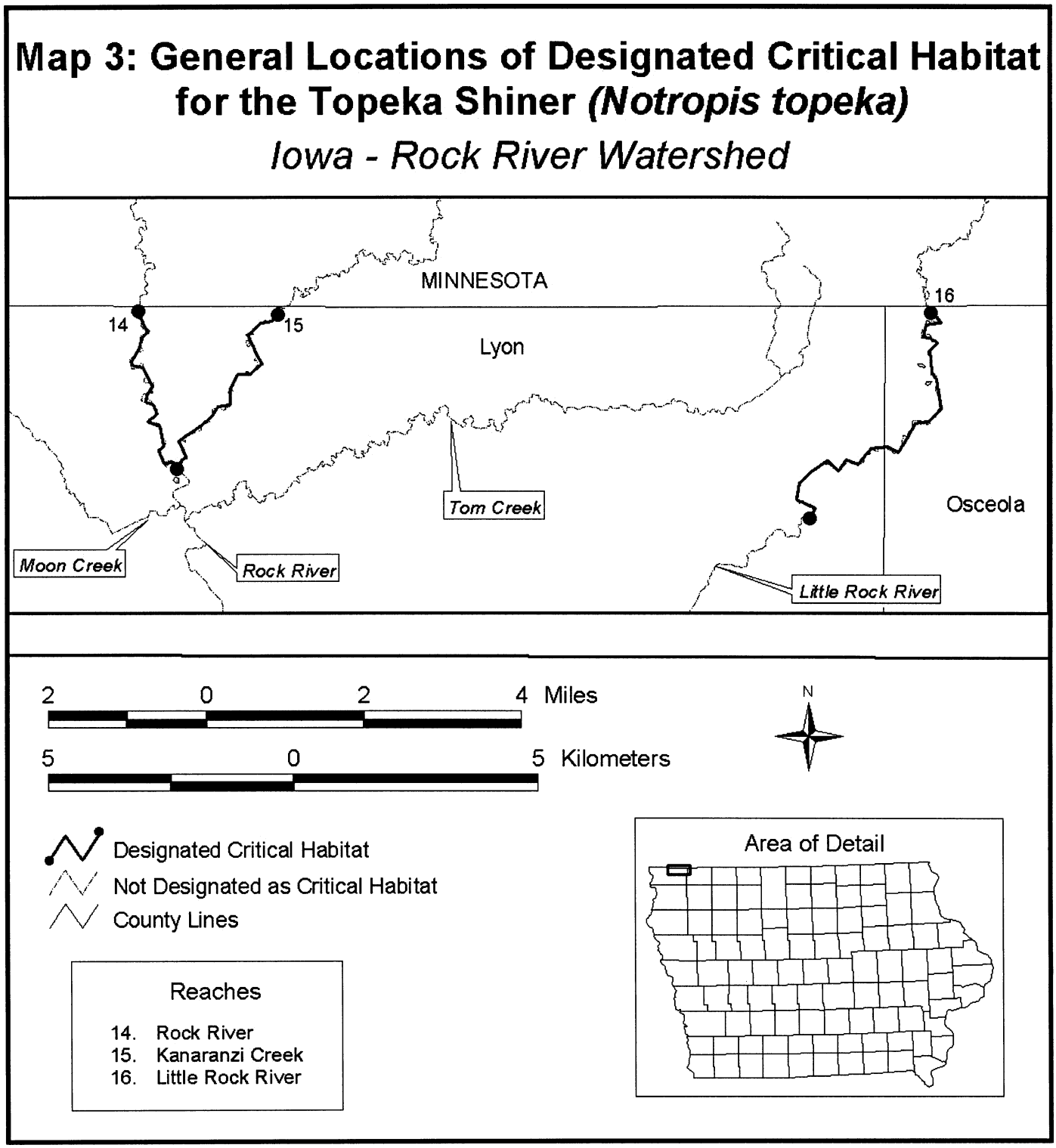
Area of Detail



■ 5. In § 17.95(e)(8), revise Map 2 to read as follows:



■ 6. In § 17.95(e)(10), revise Map 3 to read as follows:



■ 7. In § 17.95(e)(11)(xvi), remove the words ''Sec. 22'' and ''Sec. 23'' and add in their place, respectively, ''Sec. 23'' and ''Sec. 22''.

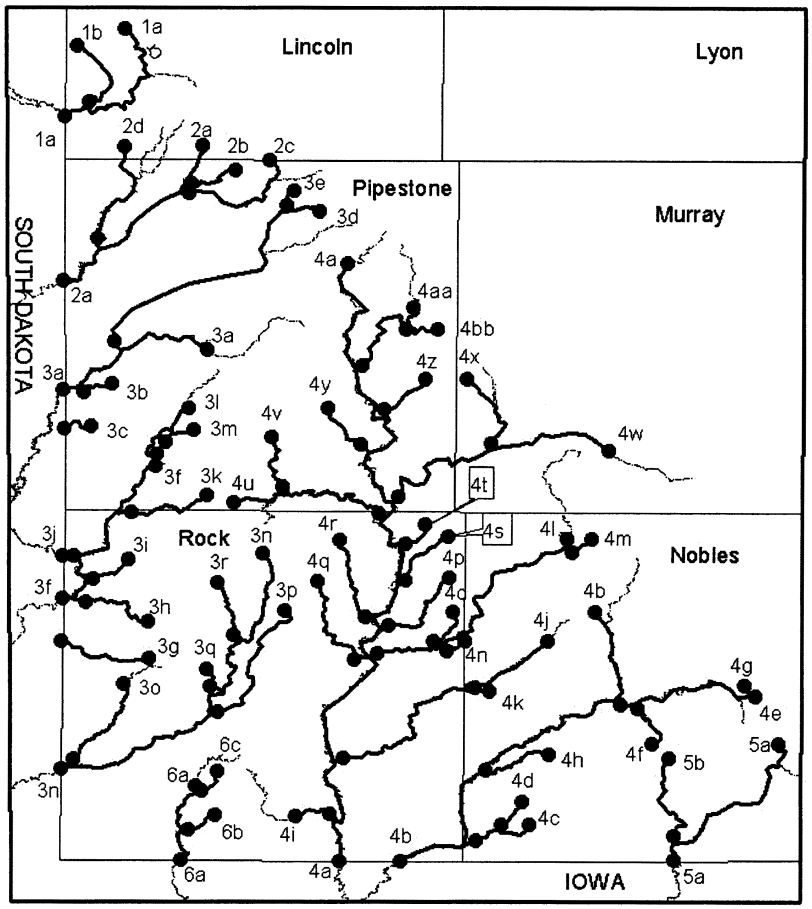
■ 8. In § 17.95(e)(11)(xxi), remove the words ''its confluence with Beaver Creek'' and add in their place ''the Minnesota/South Dakota border''.

■ 9. In § 17.95(e)(11)(xlii), remove the words ''Sec. 33'' and add in their place ''Sec. 13''.

■ 10. In § 17.95(e)(12), revise Map 4 to read as follows:

Map 4: General Locations of Designated Critical Habitat for the Topeka Shiner *(Notropis topeka)*

Minnesota - Big Sioux/Rock Rivers Watershed



Reaches

1a. Medary Creek
1b. Unnamed tributary
2a. Flandreau Creek
2b. Unnamed tributary
2c. East Branch Flandreau Creek
2d. Wilow Creek
3a. Pipestone Creek
3b. Unnamed tributary
3c. Unnamed tributary
3d. North Branch Pipestone Creek
3e. Unnamed tributary
3f. Split Rock Creek
3g. Unnamed tributary
3h. Unnamed tributary
3i. Unnamed tributary
3j. Pipestone Creek
3k. Unnamed tributary
3l. Split Rock Creek
3m. Unnamed tributary
3n. Beaver Creek
3o. Springwater Creek
3p. Little Beaver Creek
3q. Unnamed tributary
3r. Unnamed tributary
4a. Rock River
4b. Kanaranzi Creek
4c. Norwegian Creek
4d. Unnamed tributary
4e. East Branch Kanaranzi Creek
4f. Unnamed tributary
4g. Unnamed tributary
4h. Unnamed tributary
4i. Ash Creek
4j. Elk Creek
4k. Unnamed tributary
4l. Champepadan Creek
4m. Unnamed tributary
4n. Unnamed tributary
4o. Unnamed tributary
4p. Unnamed tributary
4q. Mound Creek
4r. Unnamed tributary
4s. Unnamed tributary
4t. Unnamed tributary
4u. Poplar Creek
4v. Unnamed tributary
4w. Chanarambie Creek
4x. North Branch Chanarambie Cr.
4y. Unnamed tributary
4z. Unnamed tributary
4aa. East Branch Rock River
4bb. Unnamed tributary
5a. Little Rock River
5b. Little Rock Creek
6a. Mud Creek
6b. Unnamed tributary
6c. Unnamed tributary

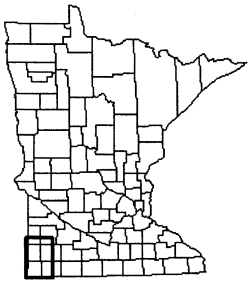
10 0 10 Miles

10 0 10 Kilometers

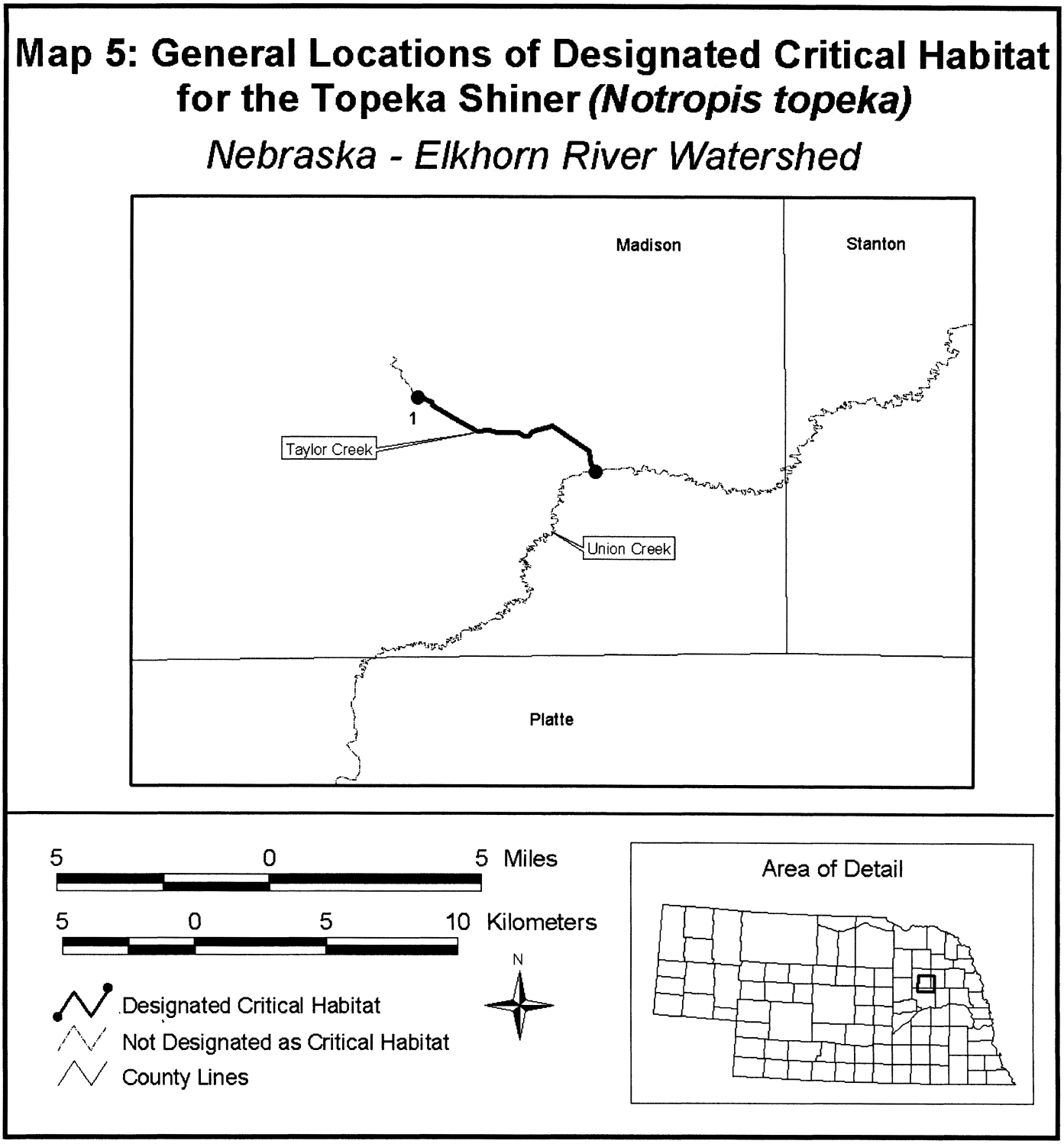
N

Designated Critical Habitat
Not Designated as Critical Habitat
County Lines

Area of Detail



■ 11. In § 17.95(e)(14), revise Map 5 to read as follows:



* * * * *

Dated: March 17, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–5954 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register
Vol. 70, No. 57
Friday, March 25, 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 THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD23

Recovery of Costs Related to the Regulation of Oil and Gas Activities on the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: MMS is proposing to develop regulations which impose new fees to cover MMS's costs of processing certain applications and permits. The purpose of this proposed rulemaking would be to charge those who benefit from the processing of applications and permits, rather than the general public. This document solicits recommendations and comments on the proposal to charge fees.

DATES: MMS will consider all comments received by April 25, 2005. MMS will begin reviewing comments and may not fully consider comments received after April 25, 2005.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods listed below. Please use 1010–AD23 as the Regulation Identifier Number in your message. See also Public Comment Procedures under Procedural Matters.

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the website for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Use the Regulation Identifier Number (RIN) in the subject line.
- Fax: (703) 787–1093. Identify with RIN.

Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Recovery of Costs Related to the Regulation of Oil and Gas Activities on the Outer Continental Shelf—AD23'' in your comments.

FOR FURTHER INFORMATION CONTACT: Martin Heinze, Program Analyst at (703) 787–1010.

SUPPLEMENTARY INFORMATION: *Public Comment Procedure:* All submissions received must include the agency name and RIN for this rulemaking. MMS'' practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Except for proprietary information, 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.

Regulatory Background: Federal agencies are generally authorized to recover the costs of providing services to non-federal entities through the provisions of the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701. The governing language concerning cost recovery can be found in Office of Management and Budget (OMB) Circular No. A–25 which states in part, ''The provisions of this Circular cover all federal activities that convey benefits to recipients beyond those accruing to the general public. When a service (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public, a charge will be imposed to recover the full costs to the Federal Government for providing this specific benefit, or the market price. The general policy is that user charges will be instituted through the promulgation of regulations.''

Regulatory Objectives: This ANPR solicits comments, recommendations, and specific remarks on a proposal to initiate a program of collecting fees for reviewing certain plans and permit applications. MMS will carefully evaluate all timely received responses as we develop a rule. MMS is considering regulations requiring operators to pay MMS fees for the review of the following:

- Exploration Plans (§ 250.203).
- Development and Production Plans (§ 250.204).
- Deep Water Operations Plans (Gulf Of Mexico (GOM) Notice To Lessees No. 2000–N06).
- Applications for Permit to Drill (APD; form MMS–123).
- Application for Permit to Modify (APM; form MMS–124).
- Application to Remove a Platform (Required by § 250.1727).
- Platform Approvals (Required by § 250.901 for the installation or modification of a platform).
- Conservation Information Documents (GOM Notice To Lessees No. 2000–N05).
- G&G Permits: Permit for Geophysical Exploration for Mineral Resources or Scientific Research on the OCS (MMS–328); Permit for Geological Exploration for Mineral Resources or Scientific Research on the OCS (form MMS–329).
- Sand and Gravel Permits: Permit for Geophysical Prospecting for Mineral Resources or Scientific Research on the OCS Related to Minerals Other than Oil, Gas, and Sulphur (MMS–135); Permit for Geological Prospecting for Mineral Resources or Scientific Research on the OCS Related to Minerals Other than Oil, Gas, and Sulphur (form MMS–136).

MMS invites specific comments on the following:

1. Are there other actions for which MMS should require fees to recover costs from operators?

2. MMS plans to calculate the fees in a manner similar to that used in the recently published Cost Recovery Rule (RIN 1010–AD16, 70 FR 12626). Are there alternative ways to determine fair and equitable fees?

3. MMS may have large cost differences associated with issuing permits and reviewing plans in the different regions (GOM, Pacific, Alaska);

should the fee be uniform nationwide or vary by region?

Dated: March 21, 2005.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 05–5884 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Areas and Danger Zone at Multiple Military Sites Within the State of Florida

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations by modifying seven existing restricted areas and one danger zone to incorporate changes to the types of restriction, the area affected by the restriction, and/or the administration of the restricted area and to disestablish one existing restricted area. Additionally, the Corps is proposing to establish two new restricted areas. The restricted areas and danger zone are located within the State of Florida. The proposed regulations will enable the affected units of the U.S. Military to enhance safety and security around active military establishments. These regulations are necessary to safeguard military vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

DATES: Written comments must be submitted on or before April 25, 2005.

ADDRESSES: Written comments should be sent to the U.S. Army Corps of Engineers, Attn: CECW–MVD (David B. Olson), 441 G Street NW., Washington, DC 20314–1000, or by e-mail to *david.b.olson@usace.army.mil.* Electronic comments should be submitted in ASCII format or portable document format to ensure that those comments can be read. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, U.S. Army Corps of Engineers, Headquarters, Washington, DC at 202–761–4922, or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by modifying the areas or restrictions at §§ 334.540, 334.560, 334.580, 334.610, 334.760, 334.775, 334.778, and 334.780, and by disestablishing the restricted area at § 334.550. Additionally, the Corps is proposing to establish two new restricted areas at §§ 334.515 and 334.635. The proposed modification to each existing restricted area or danger zone is described in the body of this notice along with a description of the two newly proposed restricted areas.

If the amendments to § 334.540 are approved, the Commander, 45th Space Wing, has requested that the restricted area at § 334.550 be disestablished. This request has been made because the modified restricted area proposed for § 334.540 will completely encompass the existing restricted area defined at § 334.550.

The Commanding Officer, Blount Island Command has requested that the Corps establish a restricted area at the U.S. Marine Slip area at Blount Island, Jacksonville, Florida. We are proposing to amend the restricted area regulations in 33 CFR part 334 by adding § 334.515 as a restricted area at the U.S. Marine Slip area at Blount Island.

The Commander, MacDill Air Force Base has requested that the Corps establish a restricted area in the Hillsborough Bay and waters contiguous to MacDill Air Force Base, Florida. We are proposing to amend the restricted area regulations in 33 CFR part 334 by adding § 334.635 as a restricted area in Hillsborough Bay and waters contiguous to MacDill Air Force Base.

Procedural Requirements

a. *Review Under Executive Order 12866.* These proposed rules are issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the proposed modifications to the existing restricted areas and the establishment of two new restricted areas would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, it is certified that this proposal if adopted, will not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* The Corps has concluded, based on the minor nature of the proposed changes, that these amendments to danger zones and restricted areas, if adopted, will not be a major Federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required.

d. *Unfunded Mandates Act.* These proposed rules do not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend portions of 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.515 to read as follows:

§ 334.515 U.S. Marine Slip area at Blount Island, Jacksonville, Fla.; restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at part 329 of this title, within the area identified at the U.S. Marine Corps Slip (also identified as Back River on many nautical maps) located on the

southeastern side of Blount Island, Jacksonville, Florida. The entrance to the U.S. Marine Corps Slip is described as commencing from a line drawn between the southwesterly most shore point (latitude 30°23′34″ N., longitude 81°30′52″ W.) and the southeasterly most shore point (latitude 30°23′38″ N., longitude 81°30′36″ W.).

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the area described in paragraph (a) of this section for any reason without the permission of the Commanding Officer, Blount Island Command, Jacksonville, Florida, or his/her authorized representative.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Blount Island Command, Jacksonville, Florida, and/or such persons or agencies as he/she may designate.

3. Amend § 334.540 by revising paragraphs (a) and (b) to read as follows:

§ 334.540 Banana River at the Eastern Range, 45th Space Wing, Cape Canaveral Air Force Station, Fla.; restricted area.

(a) *The area.* The waters as described herein are a restricted area. The area starts at an intersecting point of the Banana River and Cape Canaveral Air Force Station at approximately latitude 28°25.17′ N., longitude 80°36.24′ W., thence proceeding westerly following the shoreline of Cape Canaveral Air Force Station to the southwest perimeter of Cape Canaveral Air Force Station at approximately latitude 28°25.18′ N., longitude 80°36.65′ W.; at that point proceed north to the southern boundary of the U.S. Fish and Wildlife ''No Motor Zone'', at approximately latitude 28°25.25′ N., longitude 80°36.66′ W. From that intersecting point follow the ''No Motor Zone'' southern boundary westerly until the boundary turns north, at approximately latitude 28°25.22′ N., longitude 80°38.36′ W., thence follow the ''No Motor Zone'' boundary north until it turns westerly again, at approximately latitude 28°26.23′ N., longitude 80°38.25′ W. At this point follow the ''No Motor Zone'' boundary westerly until it intersects with the east side of the navigational channel, at approximately latitude 28°26.23′ N., longitude 80°38.47′ W. The boundary then follows the east side of the navigational channel northerly until it intersects with Kennedy Space Center NASA Causeway East Roadway, at approximately latitude 28°30.74′ N., longitude 80°36.63′ W.

(b) *The regulation.* (1) The area described in paragraph (a) of this section is closed to all vessels and persons at all times unless duly authorized by the Commander, Eastern Range, 45th Space Wing, Patrick Air Force Base, Florida; National Aeronautical and Space Administration, Kennedy Space Center Director; or the Commander, Seventh Coast Guard District; or their designees.

(2) The regulations in this section shall be enforced by the Commander, 45th Space Wing, Patrick Air Force Base, Florida, designees, Department of the Interior U.S. Fish and Wildlife Service, and the United States Coast Guard.

§ 334.550 [Removed]

4. Remove § 334.550.

5. Amend § 334.560 by revising paragraphs (a) and (b)(2) to read as follows:

§ 334.560 Banana River at Patrick Air Force Base, Fla., restricted area.

(a) *The area.* The waters within an area beginning at a point located at latitude 28°16′19″ N., longitude 80°36′28″ W.; proceed west to latitude 28°16′19″ N., longitude 80°36′35″ W.; thence, southwesterly to latitude 28°14′34″ N., longitude 80°37′08″ W.; thence, southerly to latitude 28°12′44″ N., longitude 80°37′18″ W.; thence, east to latitude 28°12′44″ N., longitude 80°37′11″ W. This encompasses an area reaching from the northern extent described to the southern extent described and extending from the mean high water line waterward a minimum distance of approximately 600 feet.

(b) *The regulations.* (1) * * *

(2) The regulations in this section shall be enforced by the Commander, 45th Space Wing, Patrick Air Force Base, Florida, and such agencies as he/she may designate.

6. Amend § 334.580 by revising paragraph (b) to read as follows:

§ 334.580 Atlantic Ocean near Port Everglades, Fla.

* * * * *

(b) *The regulations.* (1) Anchoring, trawling, dredging, or attaching any object to the submerged sea bottom shall be prohibited in the above described area.

(2) The regulations in this section shall be enforced by the Facility Director, Naval Surface Warfare Center, Detachment Dania, Florida, and such agencies as he/she may designate.

7. Amend § 334.610 by revising paragraph (a)(6) to read as follows:

§ 334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted areas and danger zone.

(a) *The areas.* * * *

(6) *Danger zone.* All waters within an area along the northeast side of the Naval Air Station on Boca Chica Key defined by a line beginning at latitude 24°35.472′ N., longitude 81°41.824′ W.; thence proceed in a northerly direction to a point at latitude 24°36.289′ N., longitude 81°41.437′ W.; thence proceed westerly to a point at latitude 24°36.392′ N., longitude 81°41.970′ W.; thence to a point on shore at latitude 24°35.698′ N., longitude 81°41.981′ W.

* * * * *

8. Add § 334.635 to read as follows:

§ 334.635 Hillsborough Bay and waters contiguous to MacDill Air Force Base, Fla.; restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at part 329 of this title, within the following boundaries. Commencing from the shoreline at the northeast portion of the base at latitude 27°51′52.901″ N., longitude 82°29′18.329″ W., thence directly to latitude 27°52′00.672″ N., longitude 82°28′51.196″ W., thence directly to latitude 27°51′28.859″ N., longitude 82°28′10.412″ W., thence directly to latitude 27°51′01.067″ N., longitude 82°27′45.355″ W., thence directly to latitude 27°50′43.248″ N., longitude 82°27′36.491″ W., thence directly to latitude 27°50′19.817″ N., longitude 82°27′35.466″ W., thence directly to latitude 27°49′38.865″ N., longitude 82°27′43.642″ W., thence directly to latitude 27°49′20.204″ N., longitude 82°27′47.517″ W., thence directly to latitude 27°49′06.112″ N., longitude 82°27′52.750″ W., thence directly to latitude 27°48′52.791″ N., longitude 82°28′05.943″ W., thence directly to latitude 27°48′45.406″ N., longitude 82°28′32.309″ W., thence directly to latitude 27°48′52.162″ N., longitude 82°29′26.672″ W., thence directly to latitude 27°49′03.600″ N., longitude 82°30′23.629″ W., thence directly to latitude 27°48′44.820″ N., longitude 82°31′10.000″ W., thence directly to latitude 27°49′09.350″ N., longitude 82°32′24.556″ W., thence directly to latitude 27°49′38.620″ N., longitude 82°33′02.444″ W., thence directly to latitude 27°49′56.963″ N., longitude 82°32′45.023″ W., thence directly to latitude 27°50′05.447″ N., longitude 82°32′48.734″ W., thence directly to latitude 27°50′33.715″ N., longitude 82°32′45.220″ W., thence directly to a point on the western shore of the base at latitude 27°50′42.836″ N., longitude 82°32′10.972″ W. The

restricted area will encompass an existing Danger Zone (§ 334.630).

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the area described in paragraph (a) of this section for any reason without the permission of the Commander, MacDill Air Force Base, Florida, or his/her authorized representative.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, MacDill Air Force Base, Florida, and/or such persons or agencies as he/she may designate.

9. Amend § 334.760 by revising paragraphs (a) and (b) to read as follows:

§ 334.760 Naval Support Activity Panama City and Alligator Bayou, a tributary of St. Andrew Bay, Fla.; naval restricted area.

(a) *The area.* The waters within an area beginning at a point located along the shore at the southern end of the facility designated by latitude 30°09′45.6″ N., longitude 85°44′20.6″ W.; thence proceed 100 feet waterward of the mean high water line directly to a point at latitude 30°09′46.8″ N., longitude 85°44′20.6″ W. From this position the line meanders irregularly, following the shoreline at a minimum distance of 100 feet from the mean high water line to a point at latitude 30°10′16.7″ N., longitude 85°45′01.2″ W. located east of the south side of the entrance to Alligator Bayou; thence directly across the entrance to a point at latitude 30°10′23.4″ N., longitude 85°45′05.7″ W. located east of the north side of the entrance to Alligator Bayou; thence continuing the northerly meandering, following the shoreline at a minimum distance of 100 feet from the mean high water line to a point at latitude 30°11′11.3″ N., longitude 85°45′02.8″ W.; thence directly to the shoreline to a point at latitude 30°11′12.3″ N., longitude 85°45′03.2″ W. This encompasses an area reaching from the southern extent described to the northern extent described and extending from the mean high water line waterward a minimum distance of approximately 100 feet.

(b) *The regulations.* (1) No vessel, person, or other craft shall enter, transit, anchor, drift or otherwise navigate within the area described in paragraph (a) of this section for any reason without written permission from the Officer in Charge, Naval Support Activity Panama City, Panama City Beach, Florida, or his/her authorized representative.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(3) The regulations in this section shall be enforced by the Officer in Charge, Naval Support Activity Panama City, Panama City Beach Florida, and such agencies as he/she may designate.

10. Amend § 334.775 by revising paragraphs (a) and (b) to read as follows:

§ 334.775 Naval Air Station Pensacola, Pensacola Bay, Pensacola and Gulf Breeze, Fla.; naval restricted area.

(a) *The areas.* (1) Bounded by a line drawn in the direction of 180° T from the position latitude 30°203′44″ N., longitude 87°17′18″ W. (near the Naval Air Station, due south of the Officer's Club) to position latitude 30°20′09″ N., longitude 87°17′18″ W. thence 94° T to position latitude 30°20′07″ N., longitude 87°16′41″ W., thence 49° T to position latitude 30°20′37″ N., longitude 87°16′01″ W. (southwest end of Lexington finger pier), thence along the shoreline to point of origin.

(2) The waters within an area enclosed by the following points: Beginning at latitude 30°21.58′ N., longitude 87°12.49′ W.; thence to latitude 30°20.25′ N., longitude 87°11.00′ W.; thence to latitude 30°20.28′ N., longitude 87°14.27′ W.; thence to the point of beginning. This encompasses a large triangular area north of Santa Rosa Island and west of the land area between Fair Point and Deer Point.

(b) *The restrictions.* (1) The area described in paragraph (a)(1) of this section will normally be in use Monday through Wednesday between 8 a.m. and 4 p.m. and one evening from 4 p.m. until 8 p.m., every other week.

(2) The area described in paragraph (a)(2) of this section will normally be utilized Wednesday through Friday between 8 a.m. and 4 p.m. for parasail operations.

(3) During those times that specific missions, exercises, or training operations are being conducted, the U.S. Navy vessels and/or crafts designated as essential to the operation(s) by proper U.S. Navy authority shall have the rights-of-way. All other vessels and crafts are required to keep clear of and remain 300 yards from all naval vessels engaged in said operations. Approaching within 300 yards of vessels and/or crafts while they are engaged in operations and/or training exercises is prohibited.

(4) Vessel traffic through the restricted area will remain open during operations and/or exercises; however, mariners shall exercise extreme caution and be on the lookout for swimmers, small craft, and helicopters when transiting the area. It should be presumed by all mariners that Navy operations and/or exercises are being conducted whenever military craft and/or helicopters are operating within the restricted area.

(5) Any problems encountered regarding Navy operations/exercises within the restricted area should be addressed to ''Navy Pensacola Command'' on Channel 16 (156.6 MHz) for resolution and/or clarification.

(6) The regulations in this section shall be enforced by the Commander of the Naval Air Station, Pensacola, Florida, and such agencies as he/she may designate.

11. Amend § 334.778 by revising paragraph (b) to read as follows:

§ 334.778 Pensacola Bay and the waters contiguous to Naval Air Station, Pensacola, FL; restricted area.

* * * * *

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering the waters described in paragraph (a) of this section for any reason. All vessels and craft, including pleasure vessels and craft (sailing, motorized, and/or rowed or self-propelled), private and commercial fishing vessels, other commercial vessels, barges, and all other vessels and craft, except vessels owned or operated by the United States and/or a Federal, State, or local law enforcement agency are restricted from transiting, anchoring, or drifting within the above described area, or within 500 feet of any quay, pier, wharf, or levee along the Naval Air Station Pensacola shoreline abutting, nor may such vessels or crafts or persons approach within 500 feet of any United States owned or operated vessel transiting, anchored, or moored within the waters described in paragraph (a) of this section. The Commanding Officer, Naval Air Station Pensacola, or his/her designee, or the Commanding Officer of a vessel of the United States operating within the said area, may grant special permission to a person, vessel, or craft to enter upon the waters subject to the restrictions aforementioned.

(2) The existing ''Navy Channel'' adjacent to the north shore of Magazine Point, by which vessels enter and egress Bayous Davenport and Grande into Pensacola Bay shall remain open to all craft except in those extraordinary circumstances where the Commanding Officer, N.A.S. or his/her designee determines that risk to the installation, its personnel, or property is so great and so imminent that closing the channel to all but designated military craft is required for security reasons, or as directed by higher authority. This

section will not preclude the closure of the channel as part of a security exercise; however, such closures of said channel will be limited in duration and scope to the maximum extent so as not to interfere with the ability of private vessels to use the channel for navigation in public waters adjacent thereto not otherwise limited by this regulation.

(3) The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Pensacola, Florida, and such agencies he/she may designate.

12. Amend § 334.780 by revising paragraphs (b)(1) through (3) to read as follows:

§ 334.780 Naval Air Station Pensacola, Pensacola, FL; restricted area.

* * * * *

(b) *The regulations.* (1) The area is established as a Naval Air Station small boat operations and training area.

(2) All persons, vessels, and other craft are prohibited from entering the waters described in paragraph (a) of this section for any reason. All vessels and craft, including pleasure vessels and craft (sailing, motorized, and/or rowed or self-propelled), private and commercial fishing vessels, other commercial vessels, barges, and all other vessels and craft, except vessels owned or operated by the United States and/or a Federal, State, or local law enforcement agency are restricted from entering, transiting, anchoring, drifting or otherwise navigating within the area described in paragraph (a) of this section.

(3) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station Pensacola and/or such persons or agencies he/she may designate.

Dated: March 16, 2005.

Michael B. White,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 05–5905 Filed 3–24–05; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 70, and 71

[OAR–2004–0010; FRL–7889–5]

RIN 2060–AM31

Proposal To Exempt Area Sources Subject to NESHAP From Federal and State Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing to exempt permanently from the title V operating permit program five categories of nonmajor (area) sources subject to national emission standards for hazardous air pollutants (NESHAP). The EPA is proposing to make a finding for these categories, consistent with the Clean Air Act requirement for making such an exemption, that compliance with Title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome on the categories. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. The EPA is proposing to decline making such a finding for a sixth category, area sources subject to the secondary lead smelter NESHAP. A previous deferral from permitting for these six categories expired on December 9, 2004, subjecting all such sources to the title V program unless and until EPA finalizes an exemption for a category.

DATES: Comments must be received on or before May 24, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0010, by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Send electronic mail (e-mail) to EPA Docket Center at *a-and-r-docket@epamail.epa.gov.*
- Fax: Send faxes to EPA Docket Center at (202) 566–1741.
- Air and Radiation Docket, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket, U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0010. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information may not be 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 Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, Information Transfer and Program Integration Division, Office of Air Quality Planning and Standards, Mail Code C304–04, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3195; fax number:

(919) 541–5509; and e-mail address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The contents of the preamble are listed in the following outline:

I. Background
A. Affected Entities
B. Statutory and Regulatory Requirements
II. Rationale for Today's Proposed Exemptions from Title V
A. General Approach
B. Dry Cleaning
C. Chrome Plating
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H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background

A. Affected Entities

The entities affected by this rulemaking are area sources subject to a NESHAP promulgated under section 112 of the Clean Air Act (Act) since 1990 and listed in the table below. An ''area source'' is a source that is not a ''major source'' of hazardous air pollutants (HAP) under the NESHAP regulations. A ''major source'' under the NESHAP regulations is ''any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any [HAP] or 25 tons per year or more of any combination of [HAP] * * *'' See definitions of ''area source'' and ''major source'' at 40 CFR 63.2.

This proposal, if finalized, would affect only whether an area source regulated by a NESHAP is required to obtain a title V operating permit and whether States are allowed to issue title V permits to exempt sources. It would have no other effect on any other requirements of the NESHAP regulations, nor on the requirements of the State or Federal title V operating permit programs.

The affected categories are:

Category	NESHAP	Estimated number of sources [1]
Perchloroethylene dry cleaning	Part 63, Subpart M	30,000
Hard and decorative chromium electroplating and chromium anodizing	Part 63, Subpart N	5,000
Commercial ethylene oxide sterilization	Part 63, Subpart O	40
Halogenated solvent cleaning	Part 63, Subpart T	3,800
Secondary aluminum production	Part 63, Subpart RRR	1,316
Secondary lead smelting	Part 63, Subpart X	3

[1] This estimated number includes both major and area sources, even though only area sources would be affected by this rulemaking. For dry cleaners and ethylene oxide sterilizers, almost all sources are area sources. For other categories listed here, EPA does not have information on the number of area sources.

B. Statutory and Regulatory Requirements

Section 502(a) of the Clean Air Act (Act) sets forth the sources required to obtain operating permits under title V. These sources include: (1) Any affected source subject to the acid deposition provisions of title IV of the Act; (2) any major source; (3) any source required to have a permit under Part C or D of title I of the Act; (4) ''any other source (including an area source) subject to standards or regulations under section 111 or 112'' [*i.e.*, a source subject to new source performance standards (NSPS) under section 111 or NESHAP under section 112], and (5) any other stationary source in a category designated by regulations promulgated by the Administrator. See §§ 70.3(a) and 71.3(a). The requirements of section 502(a) are primarily implemented through the operating permit program rules: Part 70, which sets out the minimum requirements for title V operating permit programs administered by State, local, and tribal permitting authorities (57 FR 32261, July 21, 1992), and part 71, the Federal operating permit program requirements that apply where EPA or a delegate agency authorized by EPA to carry out a Federal permit program is the title V permitting authority (61 FR 34228, July 1, 1996). The area sources subject to NSPS under section 111 or NESHAP under section 112 [addressed in category (4) above] are identified in §§ 70.3(a)(2) and (3) and §§ 71.3(a)(2) and (3) as among the sources subject to title V permitting requirements.

Section 502(a) of the Act also provides that ''the Administrator may, in the Administrator's discretion and consistent with the applicable provisions of [the Clean Air Act], promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements [of section 502(a)] if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.'' Under current regulations, area sources subject to a NSPS or NESHAP may be deferred from permitting, permanently exempt from permitting, or required to get a permit.

In the part 70 final rule issued on July 21, 1992, EPA permanently exempted from title V two categories of area sources that are subject to section 111 and 112 standards established prior to the part 70 rule (pre-1992 standards): New residential wood heaters subject to subpart AAA of part 60 (NSPS), and asbestos demolition and renovation operations subject to subpart M of part 61 (NESHAP). See §§ 70.3(b)(4) and 71.3(b)(4). The EPA also allowed permitting authorities under part 70 the option to defer permitting for other area sources subject to pre-1992 standards, while for part 71 purposes, we simply deferred them. The rationale for these deferrals was based on factors such as the burden imposed on the area sources and the impact on permitting authorities. See 57 FR 32261–32263 (July 21, 1992), and §§ 70.3(b)(1) and 71.3(b)(1).

The post-1992 standards, including the NESHAP for area sources that are the subject of today's proposal, previously have been addressed in §§ 70.3(b)(2) and 71.3(b)(2), which states that EPA will determine whether to exempt from title V permitting any or all area sources subject to post-1992 NSPS or NESHAP at the time each new standard is promulgated. Consequently, EPA issued title V exemptions for several area sources subject to NESHAP in final rules under part 63:

- All area sources within the NESHAP for publicly owned treatment works (POTW), Subpart VVV. See 63 FR 64742, October 21, 2002 and § 63.1592.
- Those area sources conducting cold batch cleaning within the NESHAP for halogenated solvent cleaning, Subpart T. See 59 FR 61802, December 2, 1994, and § 63.468(j). [Note that there are other area sources subject to this NESHAP that were subject to the deferral from permitting that expired on December 9, 2004; see next paragraph.]
- Three types of area sources (any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology, and any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient) within the NESHAP for hard and decorative chromium electroplating and chromium anodizing tanks, Subpart T. See 61 FR 27785, June 3, 1996, and § 63.340(e)(1). [Note that there are other area sources subject to this NESHAP that were subject to the deferral from permitting that expired on December 9, 2004; see next paragraph.]

The EPA has also issued deferrals from title V permitting for area sources subject to post-1992 NESHAP in three final rules under part 63. These final rules deferred title V permitting for all remaining areas sources subject to the NESHAP above (those not exempted), and deferred title V permitting for all area sources subject to various other NESHAP:

- Area sources subject to the NESHAP for Perchloroethylene dry cleaning, subpart M; chromium electroplating and anodizing, subpart N; commercial ethylene oxide sterilization, subpart O; and secondary lead smelting, subpart X. See 61 FR 27785, June 3, 1996;
- Area sources subject to the NESHAP for halogenated solvent cleaning, subpart T. See 59 FR 61801, December 2, 1994, as amended by a June 5, 1995 correction notice (60 FR 29484); and
- Area sources subject to the NESHAP for secondary aluminum production, subpart RRR. See 65 FR 15690, March 23, 2000.

These rules established an initial 5-year deferral of area source permitting, which expired on December 9, 1999. The expiration date for the deferrals was extended to December 9, 2004 in a another final rule (64 FR 69637, December 14, 1999), which justified the extension on the grounds that the conditions that prompted the previous deferrals had not changed. Today's notice addresses all six categories of area sources subject to a post-1992 NESHAP that were subject to deferrals from permitting that expired on December 9, 2004.

The deferral to date of title V permitting for the six categories of area sources subject to NESHAP addressed in this proposal was based, in large part, on the belief that requiring permitting in the earlier stages of program implementation would impose an impracticable, infeasible and unnecessary burden on the sources due to their substantial lack of technical and legal expertise and experience in environmental regulations. In addition, permitting of area sources would strain the resources of permitting authorities and compete with resources needed for major sources, which would make it difficult for area sources to obtain assistance from the permitting authorities. See 61 FR 27785, June 3, 1996; 59 FR 61801, December 2, 1994; and FR 15690, March 23, 2000. Now that the implementation of State title V permit programs has reached the point where most of the major sources have been issued their initial permits, EPA is no longer considering an extension of the deferrals based on the reasons that were important years ago. Instead, we are now proposing to permanently exempt from title V permitting five of these six categories of area sources subject to NESHAP for different reasons discussed below.

Under today's proposal, an area source is only exempt from title V permitting if it is not required to get a permit for other reasons. For example, if a particular NESHAP exempts an area source of HAP from permitting, the source would be required to obtain a permit if it is also a major source for a criteria pollutant (consistent with the definition of ''major source'' in § 70.2). In such a situation, § 70.3(a)(1) would independently require a major source permit, which would include the area source.

The EPA also wishes to clarify its position with respect to title V permitting of area sources after the effective date of any permanent exemptions we may finalize. To date, the deferrals from title V permitting for these area sources have been optional for State part 70 permit programs. A few States have reported to us that they have issued title V operating permits for various area sources that have been subject to these deferrals. See docket items 0002 and 0008. However, EPA believes that the Act does not authorize permitting authorities, including State and local agencies and EPA, to permit area sources under title V after EPA finalizes exemptions from title V for them. The EPA believes the Act contemplates that only those area sources required to be permitted under section 502(a), and not exempted by the Administrator through notice and comment rulemaking, are properly subject to title V requirements. Section 506(a) provides that permitting authorities ''may establish additional permitting requirements not inconsistent with this Act.'' The EPA believes that it would be inconsistent with the Act for States to include sources in their title V programs that EPA has exempted from title V because section 502(a) of the Act grants the Administrator alone discretion to define the universe of area sources subject to the title V programs. The EPA interprets Section 506(a) as preserving for States the ability to establish additional permitting requirements, such as procedural requirements, for sources properly covered by the program. In addition, EPA interprets Section 116 of the Act as allowing States to issue non-title V permits to sources that have been exempted from, or are outside the scope of, the title V program. If such programs are approved in a SIP, they would be federally enforceable. The EPA believes that State issuance of title V permits to area sources that EPA has exempted from title V permitting requirements would conflict with Congress's intent that EPA define the universe of sources subject to title V and would be an obstacle to the implementation of the title V program. Even if the statute were ambiguous in this regard, EPA would exercise its discretion to interpret it this way to promote effective title V implementation.

This means that State or local permitting authorities must stop issuing new title V permits to area sources after the effective date of any EPA exemption for such area sources, unless the sources are subject to title V for other reasons. Also, under the proposal's approach, if a State has already issued a permit to an area source and the area source is not subject to title V for other reasons, the

State would have to take an action to revoke, terminate, or deny the permit, after the effective date of any EPA exemption for such an area source. Unless a State permitting authority has a more specific procedure for terminating such permits, they must normally use the procedures for reopening for cause under § 70.7(f). Section 70.7(f)(1)(i) would require reopening for cause in this circumstance because once EPA has promulgated a title V exemption within the NESHAP (applicable requirement), the title V permit would no longer assure compliance with the applicable requirement. For the same reasons, State permitting authorities would generally be required to deny any application for a permit renewal for an area source EPA has exempted from title V, and EPA could find it necessary to object to the issuance of a permit for any such source or to take action to terminate or revoke such permit. (*See* section 505(e) of the Act, 40 CFR 70.7(c), (f) and 70.8(c).) The EPA requests comment on our interpretation that States may not issue title V permits to area sources we have permanently exempted from title V and that any existing permits for such sources must be terminated, revoked, or denied.

If we finalize this proposal to exempt certain area sources from title V and to not allow States to permit such sources, certain revisions to part 70 will also be necessary. First, § 70.3(a) requires State title V programs to provide for permitting ''at least the following sources,'' and then §§ 70.3(a)(1) through (5) provides a specific list of sources to be permitted. The ''at least'' language has been interpreted by some to mean that States may require permits from area sources exempted from title V through notice and comment rulemaking by EPA. However, because EPA believes the Act does not allow the issuance of title V permits to area sources that we have exempted from title V, we propose to delete this ''at least'' language from § 70.3(a). No similar changes are necessary for part 71. Second, § 70.3(b)(3) allows any exempt source to ''opt to apply for a permit under a part 70 program.'' Section 71.3(b)(3) contains similar language. Because EPA believes the Act does not allow States to permit area sources subject to permanent exemptions from permitting, we propose to delete these provisions from part 70 and part 71. This proposed change means that area sources that have been exempted through rulemaking by EPA would not be able to volunteer for a title V permit because the permitting authority would not be allowed by our interpretation of sections 502(a) and 506(a) of the Act to permit such sources under title V. Third, the prefatory phrase of § 70.3(b)(4), ''Unless otherwise required by the state to obtain a part 70 permit,'' suggests that States may require title V permits from area sources we have exempted from title V, including sources subject to part 60 (NSPS), subpart AAA, for residential wood heaters; and sources subject to part 61 (NESHAP), subpart M, for asbestos demolition and renovation. Because the prefatory phrase of § 70.3(b)(4) is inconsistent with our interpretation of section 502(a) and 506(a) of the Act, we propose to delete it from part 70. No changes are necessary to the parallel regulatory provision of § 71.3(b)(3) to conform with this interpretation.

II. Rationale for Today's Proposed Exemptions from Title V

A. General Approach

Section 502(a) of the Act provides that '' * * * the Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.''

The legislative history of the provision is not extensive, but does suggest that EPA should not grant exemptions where doing so would adversely affect public health, welfare, or the environment. See Chafee-Baucus Statement of Senate Managers, Environment and Natural Resources Policy Division 1990 CAA Leg. Hist. 905, Compiled November, 1993 (in that ''[t]he Act requires EPA to protect the public health, welfare and the environment, * * * this provision of the permits title prevents EPA from exempting sources or source categories from the requirements of the permit program if such exemptions would adversely affect public health, welfare, or the environment'').

In several previous rulemakings, EPA has stated that it would continue to evaluate the permitting authorities' implementation and enforcement of the standards for area sources not covered by title V permits. (*See* 61 FR 27785, June 3, 1996; and 64 FR 69639, December 14, 1999). In developing today's proposal, EPA sought and relied on information from State and local permitting agencies on the level of oversight they perform on the sources addressed in today's proposal. Agencies responded with information on whether they issue State permits, perform routine inspections, and provide compliance assistance to these area sources and also information on the compliance rate and number of sources in each category. These results are summarized for each category of area sources in docket item 0002.

The EPA also sought input from State small business ombudsmen and several trade associations representing dry cleaning, metal finishing, solvent cleaning and the aluminum industry. These representatives responded with recommendations and information on the area sources and compliance assistance programs currently available to them in certain States. This information is in the docket. (See docket items 0003, 0006, and 0008.)

Consistent with the statute, today's analysis focuses on whether compliance with title V permitting is ''impracticable, infeasible, or unnecessarily burdensome'' on the source categories. For the sources addressed in today's proposal, EPA has found the ''unnecessarily burdensome'' criterion to be particularly relevant. The EPA's inquiry into whether this criterion is satisfied for the area sources addressed in today's notice was primarily based on consideration of four factors, described below. The EPA determined on a case-by-case basis the extent to which one or more of the four factors is present for a given source category, and then determined whether, considered together, those factors that are present demonstrated that compliance with title V requirements would be unnecessarily burdensome.

The first factor is whether title V would add any significant compliance requirements to those already required by the NESHAP. We looked at the compliance requirements of the NESHAP to see if they were substantially equivalent to the monitoring, recordkeeping and reporting requirements of §§ 70.6 and 71.6 that we believe may be important for assuring compliance with the NESHAP. The purpose of this was to determine if title V is ''unnecessary'' to improve compliance for these NESHAP requirements at these areas sources. Thus, a finding that title V would not result in significant improvements to compliance requirements, over the compliance requirements already required by the NESHAP, would support a conclusion that title V

permitting is ''unnecessary'' for area sources in that category. One way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to assure compliance with the emission limitations and control technology requirements imposed in the standard. The authority for adding new monitoring in the permit is in the ''periodic monitoring'' provisions of §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), which only allows new monitoring to be added to the permit when the underlying standard does not already require ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring).'' Also see the so-called ''umbrella monitoring'' rule, which explains the minimum monitoring requirements for operating permits (69 FR 3202, January 22, 2004). Under the umbrella monitoring rule interpretation and the periodic monitoring rule, title V permits would not typically add any new monitoring for post-1992 NESHAP, including the NESHAP that are addressed in today's proposal. Because of this, title V permits are not likely to add any new or different monitoring (including recordkeeping designed to serve as monitoring) to the NESHAP, and thus, at least with regard to assuring compliance with the NESHAP through monitoring, title V permitting for area sources in that category is likely to be ''unnecessary.'' In addition, title V imposes a number of recordkeeping and reporting requirements that may be important for assuring compliance. These include requirements for a monitoring report at least every six months, prompt reports of deviations, and an annual compliance certification. See §§ 70.6(a)(3) and 71.6(a)(3), §§ 70.6(c)(1) and 71.6(c)(1), and §§ 70.6(c)(5) and 71.6(c)(5). When we use this first factor in our findings below, we will discuss the extent to which the compliance requirements of the NESHAP are substantially equivalent to the compliance requirements of part 70 and 71 discussed here.

The second factor is whether the area sources subject to a NESHAP possesses characteristics that would contribute to title V permitting imposing a significant burden on them, and whether this burden could be aggravated by difficulty in obtaining assistance from permitting agencies.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for area sources subject to a NESHAP would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.

Concerning the second and third factors, subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the true average annual cost of obtaining and complying with a title V permit was $7,700 per year per source, including fees. (See *Information Collection Request for Part 70 Operating Permit Regulations*, January 2000, EPA # 1587.05, docket item 0007.) The EPA does not have specific estimates for the burdens and costs of permitting area sources, however, the permit rules allow area source permits to have a reduced scope, compared to major source permits. Major source permits are required to include all applicable requirements for all relevant emissions units in the major source. See §§ 70.3(c)(1) and 71.3(c)(1). The permit rules require area source permits to include all applicable requirements applicable to the emissions units that cause the source to be subject to title V permitting. See §§ 70.3(c)(2) and 71.3(c)(2). Because of this, there may be emissions units at a facility that would not be included in an area source permit (because they are not subject to the NESHAP that triggered the requirement to get the permit), but would be included in any major source permit for a similar facility. In addition, EPA does not have specific estimates for source burdens and costs associated with general permits. However, we have made some assumptions about how burdens and costs would be reduced for general permits, and this is discussed more thoroughly in Section III of this preamble. Nevertheless, irrespective of the number of units included in the permit and the type of permit (standard or general), there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include: Reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a six-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every five years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting programs's requirements. The ICR for part 70 may help you to understand the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of §§ 70.3, 70.5, 70.6, and 70.7.

The fourth factor is whether adequate oversight by State and local permitting authorities could achieve high compliance with the particular NESHAP requirements without relying on title V permitting. A conclusion that high compliance can be achieved without relying on title V permitting would support a conclusion that title V permitting is ''unnecessary'' for those sources. Information contained in docket items 0002, 0003, 0006 and 0008 shows that many permitting authorities have alternative compliance oversight programs that result in high compliance with NESHAP requirements without relying on title V permits.

In addition to determining whether compliance with title V requirements would be ''impracticable, infeasible or unnecessarily burdensome'' for the area sources, EPA also considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area sources would adversely affect public health, welfare, or the environment.

The EPA believes the vast majority of area sources proposed today for exemption from title V permitting in this notice are typically subject to not more than one NESHAP, and few other requirements under the Act, and that these NESHAP are relatively simple in how they apply to these sources. One of the primary purposes of the title V program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. The vast majority of NSPS and NESHAP standards apply only to major sources, with only a small number of such standards regulating any activities at area sources. It is beyond the scope of this notice to provide a comprehensive list of Federal standards that specifically

regulate area sources, but there are currently only about 12 NESHAP and NSPS, and several categories of solid waste incinerators under section 129 that do so. Because there are so few standards that regulate areas sources, the likelihood that multiple NSPS or NESHAP would apply to these areas source is low. Also see docket item 0008, where State of Georgia officials explain that State operating permits for halogenated solvent cleaners, chrome platers, and secondary aluminum smelters are ''significantly less complex'' than title V permits, and where, for cost estimation purposes, they consider major source EO sterilizers and area MACT sources comparable because they are ''(1) relatively simple facilities with a single process, and (2) generally subject to only one applicable requirement—the ethylene oxide MACT standard.'' Aside from Federal standards that may impose applicable requirements on these area sources, EPA-approved SIP's will contain so-called ''generic'' applicable requirements that are likely to apply to these area sources. ''Generic'' applicable requirements are relatively simple requirements that apply identically to all emissions units at a facility (*e.g.*, source-wide opacity limits and general housekeeping requirements). Because of their nature, EPA has previously advised States that they did not warrant comprehensive treatment in permits. (See *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, March 5, 1996.) For these reasons, as well as the source-specific reasons described below, EPA believes exempting these sources will not adversely affect public health, welfare, or the environment.

Also, requiring permitting of area sources will likely cause, at least in the first few years of implementation, permitting authorities to shift resources away from assuring compliance for major sources with existing permits, to issuing new permits for area sources. This has the potential, at least temporarily, to reduce the overall effectiveness of the States' title V permit programs, which could potentially adversely affect public health, welfare, or the environment. See docket item 0008, where State of Georgia officials explain that permitting all the area sources proposed for exemption in today's notice would triple the number of title V permits issued in the State of Georgia, and that, among other possible implementation concerns, it would be ''difficult if not impossible'' for them to obtain approval to obtain additional full time employees. Although State permit programs have authority to raise whatever fees are necessary to cover the costs of the program, in most States, the program does not have independent authority to increase its budget or fees. In many States, any such increases must be approved by the legislature within the State budget process, which can lead to significant delays in getting necessary authority to meet new demands.

Finally EPA solicits comment on our general approach to determining if these area sources should be exempt from permitting. First, we solicit comment on whether the factors we used to reach the findings in today's proposal are the most appropriate factors to use for these purposes, and if there are other factors that may be more appropriate. Second, we solicit comment on how these NESHAP apply to these area sources, any circumstances where multiple NESHAP may apply to area source subject to these NESHAP, the other applicable requirements that apply to these area sources, and the nature of these other applicable requirements. Third, we solicit input on the likelihood that requiring permits of area sources subject to these NESHAP will cause permitting authorities to shift resources away from major sources, at least on a temporary basis, the potential affect this may have on assuring compliance with existing permits for major sources, and the potential for this to adversely affect public health, welfare, or the environment. Fourth, we solicit comment on the specific burdens and costs on these area sources in the event that they are required to get permits, including the potential for difficulty for the source in obtaining assistance from the permitting authority, and whether the costs for sources are justified with respect to any potential compliance gains that may be achieved through permitting. Fifth, we solicit comment seeking more accurate data on the number of area sources subject to each specific NESHAP addressed in today's proposal.

B. Dry Cleaning

The dry cleaning NESHAP applies to an estimated 30,000 area source dry cleaning facilities using Perchloroethylene, or PCE, which is known to cause cancer in animals, which is suspected to cause cancer in humans, and which also has non-cancer toxic effects.

The EPA proposes to exempt area source dry cleaners from title V for three reasons.

First, requiring title V permits would impose a relatively significant burden on these sources. Dry cleaners are typically very small ''mom and pop'' retail establishments employing only a few people. Dry cleaners have extremely limited technical and economic resources. According to the International Fabricare Institute, 85 percent of dry cleaners are small, single-family, independent operations. The average dry cleaner employs 5 people. Profit margins are less than 1% on average, and the average (median) dry cleaner has annual revenues (sales) of $200,000. (See economic profile in docket Item 0004.) Unlike the larger major sources, area source dry cleaners would typically have no staff trained in environmental requirements and would find it difficult to hire outside professionals to help them understand and assure compliance with the permitting requirements. Also see discussion in section II.A of this preamble on the burdens and costs that title V permitting imposes on sources generally.

In EPA's outreach in recent years, several State agencies have told us that, in their experience, implementing area source emissions standards, such as the dry cleaning NESHAP, through permits did not result in increased compliance with the emissions standards. They reported that successful implementation of emission standards at area sources could only be achieved by spending significant one-on-one effort explaining the requirements in simple, non-regulatory terms the operators could understand. Even so, agencies reported that many follow-up visits were needed to verify that the requirements were understood and followed. (See docket items 0003, 0006, and 0008.) This experience illustrates that permitting may not significantly help area sources to reach compliance with the standards, and that permitting would impose an added burden that they would find difficult to meet, given the lack of financial and technical resources of the majority of such sources.

Adding to this burden on dry cleaners is the difficulty they may encounter in obtaining adequate and timely assistance from permitting authorities. The addition of 30,000 area source dry cleaners to the national title V universe of approximately 18,000 major sources would substantially increase the volume of sources requiring operating permits. In some jurisdictions, the number of area source dry cleaners needing permits would dwarf the current title V source universe. For example, Sacramento County (15 title V sources) reports 400 dry cleaners; Puget Sound (44 title V sources) estimates over 500 dry cleaners. State and local permitting authorities are beginning to renew significant numbers of title V permits

and the resources needed to permit area source dry cleaners would likely compete with the resources needed for the permitting of major sources.

Second, the costs associated with title V permitting would be significant for the average dry cleaner. While there are no cost estimates for area sources in the ICR, it is reasonable to assume that the cost of permitting area sources will be less because they are generally less complex than major sources and the permits contain fewer emissions units and fewer applicable requirements. Even if costs for dry cleaners were only half the average cost for a major source, the costs would still represent an excessively high percentage of sales for the average dry cleaner. This would be especially true for the smallest dry cleaners, those that collect only $75,000 per year in revenue. (See *Economic Impact Analysis of Regulatory Controls in the Dry Cleaning Industry*, EPA–45/3–91–021b.) Also, as described above, the judgement of many permitting authorities is that implementing area source emissions standards, such as the dry cleaning NESHAP, through permits would not result in increased compliance with the emissions standards. Thus, EPA believes that the costs of title V permitting for area sources subject to the drycleaner NESHAP would not be justified taking into consideration the low potential for compliance gains from permitting such sources.

Third, title V permitting is not necessary to improve compliance for dry cleaners. Based on EPA's outreach, out of 25 State and local agencies that reported a compliance rate for area sources dry cleaners, 13 reported that they were able to achieve high compliance rates without title V permits. (See table for dry cleaners in docket item 0002.) These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. While the remaining permitting authorities reported lower compliance rates, the outreach shows that title V permitting is not a necessary element for achieving high levels of compliance with the NESHAP for area sources, when States have other options available to them, such as inspection and oversight programs.

Furthermore, resources needed to permit dry cleaners would compete with resources needed to permit major sources, and might actually reduce the overall effectiveness of the title V program. This is especially true for area source dry cleaners because we estimate there are as many as 30,000 of them nationally, with the total number of major sources required to get permits estimated at about 18,000 nationally.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the dry cleaner NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area sources subject to this NESHAP be exempt from title V permitting.

C. Chrome Plating

The NESHAP for hard and decorative chrome electroplating and chromic acid anodizing, subpart N, regulates a number of different operations, which are significant emitters of chromium compounds to the atmosphere. About two-thirds of the chromium compound emissions from all chromium sources are in the form of chromium VI. Human studies have established that inhaled chromium VI is a human carcinogen, resulting in an increased risk of lung cancer. Chromium VI also has acute noncancer effects on the respiratory, gastrointestinal and neurological systems.

The EPA permanently exempted from title V permitting several area source operations that are regulated by the standard (any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology, and any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient), see § 63.340(e)(1). (Also see the final rule, 61 FR 27785, June 3, 1996.) The rationale used to exempt these operations was that the standard could be implemented outside of a title V permit, and that the standard had recordkeeping and reporting requirements similar to what title V would impose.

Although no specific cost or burden estimates are available to EPA for area sources subject to this NESHAP, EPA believes that the costs and burdens of title V permitting for an area source subject to this NESHAP would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

For today's proposal, EPA also considered whether title V would add any significant compliance requirements to those already required by the NESHAP. After a comparison of the compliance requirements of the NESHAP to those of title V, EPA concludes that they are substantially equivalent. As explained in section II.A, chrome electroplaters already have ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring),'' thus, title V's periodic monitoring rules would not apply to these sources, and title V would not add any monitoring for these sources over what is already required by the NESHAP. The chromium NESHAP requires area sources to submit ongoing compliance status reports, which must include a description of the NESHAP limitations or work practice standards, the operating parameters monitored to show compliance, information about the results of monitoring, including about excess emissions and exceedances, and a certification by a responsible official that work practices were followed. See § 63.347(h). Similarly, title V rules require a 6-month monitoring report, prompt reporting of deviations, and an annual compliance certification. See §§ 70.6(a)(3)(iii) 71.6(a)(3)(iii), and §§ 70.6(c)(5) and 71.6(c)(5). Title V requires deviation reports and monitoring reports to be submitted at least every 6 months, while the NESHAP requires excess emissions reports to be submitted on an annual basis, unless periods of excess emissions exceed 1 percent of operating time, or malfunctions exceed 5 percent of operating time, in which case the reports must be submitted on a semiannual basis. The NESHAP requirement for an on-going compliance status reports also satisfies many of the requirements of title V for the annual compliance certification. Although these two sets of requirements are not exactly the same, they are very similar, and the differences are not significant. Thus, EPA believes the compliance requirements of title V and the NESHAP are substantially equivalent, such that title V permitting will likely result in added burdens, which are unnecessary to improve compliance.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the chromium electroplating NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area sources subject to this NESHAP be exempt from title V permitting.

D. Halogenated Solvent Degreasing

The EPA proposes to exempt area sources regulated by solvent degreasing NESHAP from title V for two reasons.

First, requiring title V permits would impose a significant burden on area source solvent cleaners (degreasers) subject to this NESHAP. Area source degreasing operations are typically very small operations employing only a few people. (See economic data in docket item 0004.) We believe these operations have limited technical and economic resources and little experience in environmental regulations. Unlike the larger major sources, area source degreasing operations typically have no staff trained in environmental requirements and are generally unable to afford to hire outside professionals to assist them with understanding and meeting the permitting requirements. In addition, our outreach to States showed a general preference by them for implementing each of the NESHAP addressed in today's proposal through one-on-one outreach, including followup visits, rather than by using title V permits. (See docket items 0003, 0006, and 0008.) Thus, EPA believes title V permits will not significantly help these sources to comply with the NESHAP requirements, and that the permitting requirements would be an additional burden they would have difficulty meeting. Although no specific cost or burden hour estimates are available to EPA for area sources in general, or for sources subject to this NESHAP in particular, EPA believes that the costs and burdens of title V permitting for an area sources subject to this NESHAP would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

Second, requiring title V permits of area source solvent degreasers does not appear necessary to improve compliance with the NESHAP. From EPA's research on area source oversight, 10 State and local agencies (of 48 reporting) have shown the ability to achieve high compliance rates with area source halogenated solvent cleaners without title V permits. See table for degreasers in docket item 0002. These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. While the remaining permitting authorities reported lower (or unknown) compliance rates, EPA believes this outreach shows that title V permitting is not a necessary element for achieving high levels of compliance by these area sources with the NESHAP.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the halogenated solvent degreaser NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area sources subject to this NESHAP be exempt from title V permitting.

E. Ethylene Oxide Sterilizers

Ethylene oxide (EO) sterilizers are a source of emissions of ethylene oxide, which is classified as a probable human carcinogen and has adverse effects on the reproductive system. Although no specific cost or burden hour estimates are available for area sources in general, or for sources subject to this NESHAP, EPA believes that the costs and burdens of title V permitting for these sources would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

First, EPA considered whether title V added any significant compliance requirements to those already required by the EO sterilizer NESHAP. We compared the compliance requirements of the NESHAP with title V's requirements, and found that the requirements are substantially equivalent when the source employs continuous monitoring methods to assure proper operation and maintenance of its control equipment. The EPA also notes that although we have no data to show the percentage of area sources regulated by this standard that actually employ continuous monitoring methods, we believe most EO sterilizers will use both thermal oxidizers and scrubbers to meet the emission limitations of the standard, that continuous monitoring methods (instrumentational temperature readings) will be used to show compliance when thermal oxidizers are employed, and that noncontinuous monitoring methods (*e.g.*, weekly readings of glycol levels in tanks) will be used to show compliance when scrubbers are employed.

Both the continuous and noncontinuous monitoring methods required by these standards provide ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring),'' thus, title V's periodic monitoring rules would not apply to these sources, whether they employ continuous or noncontinuous monitoring methods, and title V would not add any monitoring for these sources over what is already required by the NESHAP.

When continuous monitoring is used, the NESHAP requires excess emissions reports to be submitted on a semiannual basis. These excess emissions reports must include information about continuous monitoring of process and control system parameters, and periods of excess emissions, including any corrective actions taken (§ 63.10(e)(3)). This information is similar to the information required in the prompt deviation and monitoring reports under the title V rules (§§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii)). The annual compliance certification report requirement of title V is not met by the NESHAP, so the permit would impose this additional compliance obligation, if the source were required to get a permit. When monitoring is not continuous, the NESHAP does not require excess emissions reports to be submitted, and consequently, title V would add more requirements, such as prompt deviation reporting, six-month monitoring reports, and an annual certification of compliance.

At least for sources with continuous monitoring methods, EPA believes the absence of the annual certification report is not likely to have a significant impact on compliance with the NESHAP. In particular, EPA points to the monitoring requirements of the standards, which meets all title V requirements, and the excess emission report requirements, which provide useful compliance data based on the monitoring results, including identification of all periods of noncompliance with the emission standard or control system parameters. Even though the differences between the NESHAP and the title V compliance requirements are more pronounced in this case (compared to chrome electroplaters, for example), we believe the differences are not significant enough to find that requiring title V permits would result in significant improvements to compliance requirements, compared to the compliance requirements required by the NESHAP. Thus, at least for sources using continuous monitoring methods, we believe title V would not add requirements that would significantly improve compliance with the EO sterilizer NESHAP, and thus, title V would be unnecessary for these area sources. Although EPA believes the typical source subject to this NESHAP uses both continuous and noncontinuous monitoring, we solicit comment on the percentage of area sources subject to this NESHAP that use continuous monitoring methods. In addition, we solicit comment on the extent to which NESHAP compliance may be improved by requiring these area sources to conduct annual

compliance certification under title V, including the extent to which any such improvements would be derived from the threat of enforcement for a false compliance certification.

Second, regardless of the type of monitoring used, requiring title V permits of these area sources is not necessary to achieve compliance. Based on EPA's outreach, 10 State and local agencies reported their compliance rates for area sources regulated by the EO sterilizer NESHAP as either high (in 9 cases) or ''in compliance'' (in 1 case) without relying on title V operating permits. (See table for EO sterilizers in docket item 0002.) These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. This shows that title V permitting is not a necessary element for achieving high levels of compliance for these area sources.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the EO sterilizer NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area source subject to this NESHAP be exempt from title V permitting.

F. Secondary Aluminum

The EPA proposes to exempt area sources subject to the secondary aluminum NESHAP from title V permitting for three reasons.

First, title V permitting would impose a burden on area sources subject to the secondary aluminum NESHAP that would be difficult for them to meet with current resources. In 2001, there were over 1,300 facilities in the secondary aluminum industry. Half of these facilities employed fewer than 20 employees. (See economic data in docket item 0004.) These small sources would likely lack the technical resources needed to comprehend and comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. Although no specific cost or burden hour estimates are available for area sources subject to this NESHAP, EPA believes that the costs and burdens of title V permitting for an area source subject to this NESHAP would be significant. For information on burdens and cost associated with title V permitting in general, see the detailed discussion in section II.A of this preamble.

Second, EPA considered whether title V added any significant compliance requirements to those already required by the secondary aluminum NESHAP. We compared the compliance requirements of the NESHAP with title V's requirements, and found that the requirements are substantially equivalent when the source employs continuous monitoring of temperature to show compliance with the NESHAP. The EPA also notes that no specific data are available, but EPA believes most secondary aluminum facilities will comply with the standard using baghouses or thermal oxidizers (using continuous temperature monitoring to show compliance), while a few will use scrubbers (using noncontinuous compliance methods). Both the continuous and noncontinuous monitoring methods required by these standards provide ''periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring).'' Thus, title V's periodic monitoring rules would not apply to these sources, whether they employ continuous or noncontinuous monitoring methods, and title V permits would not add any monitoring for these sources over what is already required by the NESHAP.

For most sources (where continuous temperature monitoring is used), the NESHAP requires excess emissions reports to be submitted on a semiannual basis. These excess emissions reports must include information about continuous monitoring of process and control system parameters, and periods of excess emissions, including any corrective actions taken [see § 63.10(e)(3)]. This information is similar to the information required in the prompt deviation and six-month monitoring reports of the title V rules (§§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii)). The requirement of title V for an annual compliance certification report is not met by the NESHAP, so this obligation would be added to the requirements imposed by the permit, if the source were required to get a permit. The EPA believes the absence of the annual certification report for these area sources is not likely to have a significant impact on compliance. In particular, EPA points to the monitoring requirements of the standards, which meets all title V requirements, and the excess emission report requirements, which provide useful compliance data based on the monitoring results, including identification of all periods of noncompliance with the emission standard or control system parameters. Although there are differences between the NESHAP and title V compliance requirements, we believe the differences are not great enough to have a significant affect on compliance with the NESHAP for these area sources. Thus, for most area sources subject to the secondary aluminum NESHAP, title V would not add requirements that would significantly improve compliance with the NESHAP, and thus, title V would be unnecessary for these area sources. The EPA solicits comment on the percentage of area sources subject to this NESHAP that use continuous monitoring methods. In addition, we solicit comment on the extent to which NESHAP compliance may be improved by requiring these area sources to conduct annual compliance certification under title V, including the extent to which any such improvements would be derived from the threat of enforcement for a false compliance certification.

Third, requiring title V permits of these area sources is unnecessary to improve compliance. Four out of five State and local agencies have shown that they are able to achieve high compliance rates with area source secondary aluminum facilities without title V permits. (See table for secondary aluminum in docket item 0002.) These agencies employ a mix of State permits, frequent inspections and appropriate compliance assistance. This shows that title V permitting is not a necessary element for achieving high levels of compliance with the secondary aluminum standard for area sources.

Taken together, these factors support a finding that title V permitting would be unnecessarily burdensome on area sources subject to the secondary aluminum NESHAP and that title V exemption for these sources would not adversely affect public health, welfare, or the environment. Therefore, EPA proposes that area source subject to this NESHAP be exempt from title V permitting.

III. General Permits

In the preceding Section of this preamble, EPA discusses proposed findings of unnecessary burden for five categories of area sources. In doing so, we generally discussed burdens and costs associated with title V permitting for sources. This information was focused primarily on the area sources being issued standard (non-general) title V permits. However, title V allows issuance of general permits in appropriate circumstances. See section 504(d) of the Act, and §§ 70.6(d) and 71.6(d). A general permit is issued by the permitting authority for a source category as defined by certain types of equipment, operations, processes, and emissions. A general permit under title V provides a streamlined process for

issuing permits to a large number of similar sources. Specifically, this means that, compared to standard permits under title V, general permits typically require less comprehensive permit applications and have simpler permit application procedures. Area sources in the NESHAP categories addressed in today's proposal have essentially similar operations or processes, emit pollutants with similar characteristics, and are subject to the same or substantially similar requirements governing emissions, operation, monitoring, recordkeeping and reporting, thus, such sources may be candidates for general permits.

Although general permits could potentially reduce the burdens and costs of permitting area sources, when all of the factors used in our analysis in Section II of this preamble are considered for general permits, EPA believes the potential burden and cost reduction is not sufficient enough to cause us to alter the findings we made in the preceding Section of the preamble. The following analysis looks at how each of the factors we used in Section II might be affected under a general permitting approach.

The first factor, whether title V would add significant compliance requirements, chiefly monitoring recordkeeping, and reporting, to those already required by the NESHAP, was cited in Section II of this preamble for area sources subject to the NESHAP for chrome plating, EO sterilizing, and secondary aluminum. Under the permit rules, general and standard permits are subject to the same permit content requirements under §§ 70.6 and 71.6, including recordkeeping, reporting, and monitoring requirements. Thus, with respect to the first factor, title V would affect units to which the NESHAP applies in the same manner for general permits, as for standard permits.

The second factor, the overall burdens on the sources and whether permitting authorities can provide adequate assistance to the sources, was cited in Section II of this preamble for area sources subject to NESHAP for dry cleaning, solvent degreasing, and secondary aluminum. For these sources, the previous analysis pointed out that these sources lacked resources and experience with environmental regulations. Although general permit would potentially simplify the permit application process, a general permit would still contain the same applicable requirements of the NESHAP. This is true because the permit content requirements of §§ 70.7 and 71.6, such as monitoring, recordkeeping and reporting, are the same for standard and general permits. Thus, even if applying for a general permit is less of a burden, sources will have significant burdens and costs associated with understanding and complying with the general permit requirements. (Also see section II.A of this preamble for a discussion of the costs and burdens imposed by title V on sources). Accordingly, although general permits may reduce the cost of applying for a permit, there is a possibility that the remaining burdens of complying with the permit and obtaining assistance to understand it will continue to be significant for these area sources.

The third factor, whether costs of title V permitting are excessive with respect to any expected gains in compliance that may be achieved from permitting, was cited in Section II of this preamble for area sources subject to the NESHAP for dry cleaning. Many area source dry cleaners and degreasers are small businesses with limited resources and environmental experience. Even though general permits may reduce the costs of applying for a permit, we believe the economic data in the docket for these sources shows that the remaining costs of complying with the permit and obtaining assistance to understand it will continue to be significant for these area sources. Also, EPA's outreach in recent years has shown that some State agencies generally do not believe that implementing area source standards through permits will result in increased compliance, and EPA believes this will be as true with general permits as with standard permits.

The fourth factor, whether adequate oversight by the permitting authority would result in compliance without permitting, was cited in Section II of this preamble for area sources subject to NESHAP for dry cleaning, solvent degreasing, EO sterilizing, and secondary aluminum. In our analysis in Section II of this preamble, we looked at the compliance rates that permitting authorities could achieve without permits, such as through State permit programs and comprehensive oversight programs. In effect, we considered whether title V was necessary for compliance with the NESHAP to be achieved. As we explained in Section II of this preamble, the permit content requirements of §§ 70.6 and 71.6 for monitoring, recordkeeping and reporting are identical for general and standard permits. Because of this, we believe the analysis done in section II of this preamble will apply with equal force for general permits. Consistent with that analysis, compliance can largely be achieved for these source categories without relying on operating permits.

Nevertheless, as an alternative to today's proposal, EPA seeks comment on the option of requiring permitting authorities to issue general permits to the five categories of area sources proposed for exemption from title V. Specifically, EPA invites comment on the extent to which there would be ''unnecessary burden'' on the area sources if general permits were issued to them, or if compliance with general permits would be impracticable or infeasible for them. The EPA notes that while some States claim that the permitting of area sources will strain the resources of permitting authorities, a few States have successfully implemented a general permit program for area sources. The sources in these five source categories of area sources may be good candidates for general permits. For example, the State of Florida currently issues general permit under its title V program for these five categories of area sources. Under this program, an area source in Florida mails in a notification form that informs the Florida Air Quality Division that it is eligible for a general permit. In the form the source agrees to comply with all the specific conditions of the general permit rule.

IV. Request for Comment on Secondary Lead Area Sources

In contrast to the five categories discussed above, we propose to decline making a finding that title V permitting for secondary lead area sources is impracticable, infeasible, or unnecessarily burdensome. Although it is not necessary for EPA to issue a proposed rule before declining to make such a finding, we are requesting comment here to determine whether or not EPA should make such a finding, and, in turn, whether or not EPA should finalize an exemption for this source category as well. At this time we are proposing to decline making such a finding because we did not find that an exemption from title V permitting is warranted for area sources subject to the NESHAP for secondary lead smelters. We considered the same factors as for the previous categories, but we did not find information or data at this time that would lead us to a finding that an exemption from title V permitting is warranted in the same manner as we believe exemptions are warranted for area sources subject to other NESHAPS addressed in today's notice. (*See* section II of this notice.) Although we are proposing to decline making such a finding, in the alternative, if EPA receives information or data sufficient to support a finding that permitting area source lead smelters would be

''impracticable, infeasible, or unnecessarily burdensome'' on such sources and we determine that title V exemption for these sources would ''not adversely affect public health, welfare, or the environment'' we could opt to make such a finding and exempt this source category from permitting as well.

Secondary lead smelters have been identified by the EPA as significant emitters of several chemicals identified in the Act as hazardous air pollutants (HAP) including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. Chronic exposure to arsenic and 1,3-butadiene is associated with skin, bladder, liver and lung cancer and other developmental and reproductive effects. Exposure to lead compounds results in adverse effects on the blood, central nervous system and kidneys.

Section 502(a) of title V does not require EPA to offer any justification for not exempting area sources from title V permitting. A justification is required only if an area source is exempted from title V. Nevertheless, we offer the following explanation to help the public understand EPA's reasons for proposing to allow the deferrals to expire.

The EPA is proposing to allow the title V deferrals to expire for area sources subject to the secondary lead smelter NESHAP because, unlike the five source categories we are proposing to exempt, EPA could not find, consistent with the Act, that compliance with the title V requirements is impracticable, infeasible, or unnecessarily burdensome on such source categories. Only 3 secondary lead smelters area sources are believed by EPA to exist. (Also see section I.A. of this preamble for an estimate of affected entities for each source category addressed by this proposal.) Also, EPA believes that two of these sources already have been issued title V permits by their respective permitting authorities. Thus, requiring title V permits for these area sources appears neither impracticable nor infeasible. We also do not have any information to suggest that it has been unnecessarily burdensome, but we ask for comment on whether there is additional information that could further inform EPA's decision whether to make such a finding.

If EPA reaches a final decision that a 502(a) finding for secondary lead smelters is unwarranted, any secondary lead area source that has not already applied for a title V permit would be required to submit a title V permit application by December 9, 2005, as provided in § 63.541(c) of subpart X. Also, as provided in § 70.3(c)(2) and § 71.3(c)(2), assuming the source is not subject to title V for another reason, the permit for the source must include the requirements of subpart X and all other applicable requirements that apply to emissions units affected by subpart X, while any units not subject to subpart X may be excluded from the permit. (See 68 FR 57518, October 3, 2003, footnote #7 on page 57534.)

V. Environmental Results Program

The EPA has a strong interest in ensuring that sources in the five area source categories proposed to be exempted from title V continue to comply with their NESHAP requirements. From our outreach, we believe that State and local permitting authorities can determine the best way to ensure compliance with these standards.

One successful alternative to case-by-case permitting is an oversight program developed by the Massachusetts Department of Environmental Protection, called the Environmental Results Program (ERP). This alternative program has proven very effective in ensuring compliance by small sources with their applicable environmental requirements. The ERP model offers a sector-based approach (which can be a multimedia approach) that replaces facility-specific State permits with industry-wide environmental performance standards and annual certifications of compliance. The ERP applies three innovative and interlinked tools to enhance and measure environmental performance. These tools supplement a State's traditional compliance inspection and compliance assistance efforts and consist of: (1) An annual facility-specific, self certification questionnaire; (2) compliance assistance to include ''plain language'' workbooks describing the applicable regulations in a user's friendly approach and outreach workshops to educate and train affected facility owner/operators; and (3) a performance measurement methodology to track and validate facility performance. This methodology includes statistically valid compliance inspections protocols to measure group performance and target inspections. The ERP compliance assistance workbooks include all applicable regulatory requirements as well as pollution prevention and best management practice opportunities.

Fourteen States now implement ERP projects (across 9 small business-dominated sectors). The EPA encourages States to investigate how the ERP model might be beneficial to their compliance and oversight efforts. The EPA can provide assistance to States interested in conducting ERP projects. To learn more on why the ERP model is unique, what problems it was designed to solve and more details on how to set up projects, contact Scott Bowles, EPA National Center for Environmental Innovation, telephone (202) 566–2208, e-mail *bowles.scott@epa.gov* and/or visit EPA's Web site at *http://www.epa.gov/permits/*.

VI. The Effects of the End of the Deferrals for Area Sources

The deferrals from title V permitting for the six categories of areas sources addressed in this preamble expired on December 9, 2004 and those area sources became subject to title V on that date. Sections 70.5(a)(1)(i) and 71.5(a)(1) allow sources subject to the program up to one year (or such earlier date as the permitting authority may establish) to submit complete permit applications (*e.g.*, up to December 9, 2005 for sources subject on December 9, 2004). After submittal of a complete permit application, §§ 70.7(a)(2) and 71.7(a)(2) require permitting authorities to issue final operating permits within 18 months (by June 9, 2007, for applications submitted on December 9, 2005).

Because the deferrals for these five area source categories have already expired, even though EPA is proposing permanent exemptions for five of the six categories of area sources addressed in this notice, these five categories of area sources are technically subject to title V requirements until the exemptions are finalized. At the present time, EPA expects to issue a final rule in the summer of 2005, taking final action on the proposed exemptions. As noted above, State and local permitting authorities are required to receive applications within a 1-year period from the end of the deferral (*i.e.*, by December 9, 2005), although some States have shortened this period to 6 months. Given the anticipated timing of these two events, we leave it to the permitting authority to decide when to call for applications. Should an application call be made, an EPA guidance document, *EPA White Paper for Streamlined Development of Part 70 Permit Applications* (White Paper I), July 10, 1995, describes a possible method for allowing a simplified, phased, two-step approach to application preparation which may be of interest. Under the White Paper I approach, the first step consists of submittal, by the appropriate deadline, of an application that contains enough information for the permitting authority to find it administratively complete, consistent with procedures for determining applications complete

approved into their title V program by EPA, and in the second step, application updates as needed to support draft permit preparation.

VII. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is significant and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates.

B. Paperwork Reduction Act

Because today's action would permanently exempt five categories of area sources subject to NESHAPs from title V permitting requirements, this action would provide a net decrease in information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The current part 70 and part 71 rules, specifically §§ 70.3(a)(3) and 71.3(a)(3), impose permitting requirements on all area sources subject to section 112 standards not previously permanently exempted through notice and comment rulemaking. The sources addressed in today's notice were subject to deferrals from permitting that expired on December 9, 2004. (*See* 59 FR 61801, December 2, 1994, amended by 60 FR 29484, June 5, 1995; 61 FR 27785, June 3, 1996; 65 FR 15690, March 23, 2000; and 64 FR 69637, December 14, 1999). Because these area sources are currently subject to permitting requirements and because today's action proposes to permanently exempt the majority of such sources from these requirements (except for secondary lead sources), this action will provide a net decrease in information collection burdens for these sources. The information collection burden for title V permitting was estimated as part of the promulgation of the part 70 and 71 rules. The Information Collection Request (ICR) for the part 70 rule (ICR 1587.06) was extended until March 31, 2007, in November 2004 by OMB (OMB 2060–0243). The ICR for the part 71 rule (ICR 1713.05) was also extended until March 31, 2007, in November 2004 by the OMB (OMB 2060–0336).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) Small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*See* 13 CFR part 121); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. As explained in more detail above, today's action permanently exempts a large number of area sources from title V permitting and this action will provide a net decrease in information collection burdens for these sources. We have therefore concluded that today's proposed rule will relieve regulatory burden for these affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995(UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating 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. The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The estimated administrative burden hour and costs associated with obtaining and complying with a title V permit were

developed upon promulgation of the operating permit rules (part 70) and are presented in Chapter 6 of U.S. EPA 1999, *Regulatory Impact Analyses for the Operating Permit Program*, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. However, as explained above, this rule would reduce burden by exempting some of these sources from permitting.

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 proposed 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. As described in section D, above (on UMRA), this rule would reduce the overall number of sources subject to the title V program. In addition, this proposed rule would not modify the relationship of the States and EPA for purposes of implementing the title V permit program. Thus, Executive Order 13132 does not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA actively engaged the States in the development of this proposed rule. The EPA periodically informed representatives of State and local air pollution control agencies of the actions EPA was considering concerning this proposed rule. The EPA also sought information from State and local agencies concerning their oversight activities for area sources and used that information in development of 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 proposed rule does not have ''Tribal implications'' as specified in Executive Order 13175. This proposed rule concerns the exemption of area sources from the title V permit program. The Tribal Air Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as title V, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. This proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a title V permit program at this time. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes concerning title V and this proposed rule does not modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The EPA believes that this proposed rule should not raise any environmental justice issues.

List of Subjects

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 21, 2005.

Stephen L. Johnson,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart M—[Amended]

2. Section 63.320 is amended by revising paragraph (k) to read as follows:

§ 63.320 Applicability.

* * * * *

(k) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

Subpart N—[Amended]

3. Section 63.340 is amended by revising paragraph (e) to read as follows:

§ 63.340 Applicability and designation of source.

* * * * *

(e) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

4. Table 1 to Subpart N is amended by revising the entry for § 63.1(c)(2) to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to subpart N	Comment
*	*	*
§ 63.1(c)(2)	Yes	§ 63.340(e) of Subpart N exempts area sources from the obligation to obtain Title V operating permits.
*	*	*

Subpart O—[Amended]

5. Section 63.360 is amended by:

a. Revising the entry for § 63.1(c)(2) in Table 1; and

b. Revising paragraph (f).

The revisions read as follows:

§ 63.360 Applicability.

* * * * *

TABLE 1 OF SECTION 63.360—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O*	Applies to sources using 1 to 10 tons in subpart O*	Comment
*	*	*	*
63.1(c)(2)	Yes		§ 63.360(f) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	*

* * * * *

(f) If you are an owner or operator of a source using less than 10 tons that is subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

* * * * *

Subpart T—[Amended]

6. Section 63.460 is amended by adding paragraph (h) to read as follows:

§ 63.460 Applicability and designation of source.

* * * * *

(h) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.468 [Amended]

7. Section 63.468 is amended by removing and reserving paragraph (j).

8. Appendix B to Subpart T is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX B TO SUBPART T—GENERAL PROVISIONS APPLICABILITY TO SUBPART T

Reference	Applies to subpart T		Comment
	BCC	BVI	
*	*	*	*
§ 63.1(c)(2)	Yes	Yes	Subpart T, § 63.460(h) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	*

Subpart RRR—[Amended]

9. Section 63.1500 is amended by revising paragraph (e) to read as follows:

§ 63.1500 Applicability.

* * * * *

(e) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

* * * * *

10. Appendix A to Subpart RRR is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX A TO SUBPART RRR—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
*	*	*	*
§ 63.1(c)(2)		Yes	§ 63.1500(e) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	*

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Section 70.3 is amended as follows:

a. By revising paragraph (a) introductory text.

b. By removing and reserving paragraph (b)(3).

c. By revising paragraph (b)(4) introductory text.

§ 70.3 Applicability.

(a) *Part 70 sources.* A State program with whole or partial approval under this part must provide for permitting of the following sources:

* * * * *

(b) * * *

(4) The following source categories are exempted from the obligation to obtain a part 70 permit:

* * * * *

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.3 [Amended]

2. Section 71.3 is amended by removing and reserving paragraph (b)(3).

[FR Doc. 05–5932 Filed 3–24–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 482, and 488

[CMS–3835–N]

RIN 0938–AH17

Medicare Program; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants; Extension of Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for a proposed rule published in the **Federal Register** on February 4, 2005, (70 FR 6140). The proposed rule sets forth the requirements that heart, heart-lung, intestine, kidney, liver, lung, and pancreas transplant centers would be required to meet to participate as Medicare-approved transplant centers. These proposed revised requirements focus on an organ transplant center's ability to perform successful transplants and deliver quality patient care as evidenced by good outcomes and sound policies and procedures. We also proposed that approval, as determined by a center's compliance with the proposed data submission, outcome, and process requirements would be granted for 3 years. Every 3 years, approvals would be renewed for transplant centers that continue to meet these requirements. We proposed these revised requirements to ensure that transplant centers continually provide high-quality transplantation services in a safe and efficient manner. The comment period for the proposed rule is extended for 60 days.

DATES: The comment period is extended to 5 p.m. on June 6, 2005.

ADDRESSES: In commenting, please refer to file code CMS–3835–P. Because of

staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3835–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539.

SUPPLEMENTARY INFORMATION: On February 4, 2005 (70 FR 6140), we published a proposed rule in the **Federal Register** that set forth the requirements that heart, heart-lung, intestine, kidney, liver, lung, and pancreas transplant centers would be required to meet to participate as Medicare-approved transplant centers.

The proposed rule set forth the first comprehensive hospital conditions of participation (CoPs) for transplant centers that perform organ transplants. The proposed rule contains multiple new technical, structural, and performance requirements, including new procedures for approval and re-approval of transplant centers and new outcome performance measures. Due to the large number of proposed new requirements and the technical nature of the proposed outcome performance measures, we are extending the comment period to ensure sufficient time for the public to review and comment on the proposed requirements. Therefore, we are extending the public comment period for an additional 60 days, until June 6, 2005. We believe the revised date will allow sufficient time for the public to provide comments.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 18, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–5918 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 441, 486 and 498

[CMS–3064–N]

RIN 0938–AK81

Medicare and Medicaid Programs; Conditions for Coverage for Organ Procurement Organizations (OPOs); Extension of Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for a proposed rule published in the **Federal Register** on February 4, 2005, (70 FR 6086). In that rule, we proposed to establish new conditions for coverage for organ procurement organizations (OPOs), including multiple new outcome and process performance measures based on donor potential and other related factors in each service area of qualified OPOs. We are proposing new standards with the goal of improving OPO performance and increasing organ donation. The comment period is extended for 60 days.

DATES: *Effective Date:* The comment period is extended to 5 p.m. on June 6, 2005.

ADDRESSES: In commenting, please refer to file code CMS–3064–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3064–P, P.O. Box 8015, Baltimore, MD 21244–8015.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Marcia Newton, (410) 786–5265.

SUPPLEMENTARY INFORMATION: On February 4, 2005, we published a proposed rule in the **Federal Register** (70 FR 6086) that would establish new conditions for coverage for organ

procurement organizations (OPOs), including multiple new outcome and process performance measures based on donor potential and other related factors in each service area of qualified OPOs.

The proposed rule includes comprehensive conditions for coverage for OPOs that would replace the OPO existing conditions for coverage. The proposed rule contains multiple new technical, structural, and performance requirements, including new procedures for re-certification of OPOs and new outcome performance measures based on organ donor potential. Due to the large number of proposed new requirements and the technical nature of the proposed outcome performance measures, we are extending the comment period to ensure sufficient time for the public to review and comment on the proposed requirements. Therefore, we are extending the public comment period for an additional 60 days, until June 6, 2005.

Authority: Sections 1102, 1138, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320b–g, and 1395hh) and section 371 of the Public Health Service Act (42 U.S.C. 273).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 18, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–5917 Filed 3–24–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 482

[CMS–3122–P]

RIN 0938–AM88

Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for History and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we propose revisions to four of the current hospital conditions of participation (CoPs) for approval or continued participation in the Medicare and Medicaid programs. We are proposing changes to the CoP requirements related to: Completion of a history and physical examination in the medical staff and the medical record services CoPs; authentication of verbal orders in the nursing service and the medical record services CoPs; securing medications in the pharmaceutical services CoP; and completion of the postanesthesia evaluation in the anesthesia services CoP. These proposals respond to concerns within the medical community that the current Medicare hospital CoPs are contrary to current practice and are unduly burdensome. The changes specified in this proposed rule are consistent with current medical practice and will reduce the regulatory burden on hospitals.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 24, 2005.

ADDRESSES: In commenting, please refer to file code CMS–3122–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3122–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Chmielewski, (410) 786–6899. Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–3122-P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public website. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, (410) 786–9994.

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This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The web site address is: *http://www.gpoaccess.gov/fr/index.html.*

I. Legislative and Regulatory Background

A. General

In the December 19, 1997 **Federal Register** (62 FR 66726), we published a proposed rule entitled ''Medicare and Medicaid Programs; Hospital Conditions of Participation (CoPs); Provider Agreements and Supplier Approval'' (HCFA–3745–P) which specified our proposal to comprehensively revise the entire set of hospital CoPs. The CoPs are the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The CoPs are intended to protect patient health and safety and to ensure that high quality care is provided to all patients.

Sections 1861(e)(1) through 1861(e)(8) of the Act define the term ''hospital'' and list the requirements that a hospital must meet to be eligible for Medicare participation. Section 1861(e)(9) of the Act specifies that a hospital must also meet such other requirements as the Secretary of Health and Human Services (the Secretary) finds necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established in regulations, at Part 482, the requirements that a hospital must meet to participate in the Medicare program.

Compliance is determined by State survey agencies (SAs) or accreditation organizations. The SAs, in accordance with section 1864 of the Social Security Act (the Act), survey hospitals to assess compliance with the CoPs. The SAs conduct surveys using the State Operations Manual (SOM) (Centers for Medicare & Medicaid Services (CMS) Publication No. 7). The SOM contains the regulatory language of the CoPs as well as interpretive guidelines and survey procedures that give guidance on how to assess provider compliance. Under § 489.10(d), the SAs determine whether a hospital meets the CoPs and make corresponding recommendations to us about a hospital's certification, (that is, whether a hospital has met the standards required to provide Medicare and Medicaid services and receive Federal and State reimbursement).

Under section 1865 of the Act, hospitals that are accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), the American Osteopathic Association (AOA), and other national accreditation programs approved by us are deemed to meet the requirements in the CoPs. Therefore, accredited hospitals are not routinely surveyed by SAs for compliance with the CoPs but are deemed to meet most of the hospital CoPs based on their accreditation. (See 42 CFR Part 488, ''Survey Certification, and Enforcement Procedures''). However, all Medicare- and Medicaid-participating hospitals are required to be in compliance with our CoPs regardless of their accreditation status.

B. Finalizing Provisions of the December 19, 1997 Proposed Rule (HCFA–3745–P)

In the December 19, 1997 proposed rule, we proposed to revise all CoPs specified in Part 482. While our initial intention was to finalize the December 19, 1997 proposed rule in its entirety, delays within CMS, (then the Health Care Financing Administration (HCFA)) led us to re-evaluate this objective in light of concerns expressed by providers that we move forward with certain final rules in the interest of public health and safety. Our strategy to address CoPs deemed of particular urgency by providers was to finalize or ''carve-out'' specific CoPs as separate final rules. To date, we have finalized the following hospital CoPs: Organ, Tissue and Eye Procurement CoP (*see* the June 22, 1998 **Federal Register,** 63 FR 33856); Patients' Rights (see the July 2, 1999 **Federal Register,** 64 FR 36069); Anesthesia Services—CRNA supervision (*see* the November 13, 2001 **Federal Register,** 66 FR 56762); Fire Safety Requirements for Certain Health Care Facilities (*see* the January 10, 2003 **Federal Register**, 68 FR 1374); and, Quality Assessment Performance Improvement (*see* the January 24, 2003 **Federal Register,** 68 FR 3435).

Beginning in 2003, we began to develop a final rule to address public comments provided on the December 19, 1997 proposed rule for the following four requirements: (1) Completion of a history and physical examination in the medical staff and the medical record services CoPs; (2) authentication of verbal orders in the nursing service and the medical record services CoPs; (3) securing medications in the pharmaceutical services CoP; and (4) completion of the postanesthesia evaluation in the anesthesia services CoP.

Our decision to carve out these four requirements has evolved in large measure as a result of our continuing dialogue with the health care community. Through various CMS-sponsored provider forums such as the Physicians' Regulatory Issues Team (PRIT) (a team of subject matter experts who work within the government to reduce the regulatory burden on Medicare participating physicians), our open door forums, and written correspondence by a variety of organizations and individuals, we were made aware that providers overwhelmingly believe that the existing regulations for these requirements no longer reflect current health care practice. In addition, public comments received on the December 19, 1997 proposed rule strongly supported the revisions we proposed for these selected CoPs.

C. Changes as a Result of the Enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) was enacted. Section 902(a) of the MMA specifies that the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), is required to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation or an interim final regulation. Section 902 further provides that the timeline may vary among different regulations, but shall not be longer than 3 years except under exceptional circumstances.

Although we do not believe that this law operates retroactively, out of an abundance of caution, we are applying the provisions of section 902(a) of the MMA to this rule since our publication of the December 19, 1997 rule was not finalized. Had section 902(a) of MMA not been enacted, the CoP provisions stipulated in this proposed rule would have been stipulated in a final regulation. However, with the passage of section 902 of the MMA, we believe it is in the spirit of the legislation to publish a new proposed regulation.

II. Provisions of This Proposed Rule

A. Overview

In the interest of public health and safety, we propose changing the current requirements for completion of the initial inpatient medical history and physical examination, authentication of verbal orders, securing of medications, and completion of a postanesthesia evaluation within the hospital CoPs. This proposed rule responds to the health care community's primary concern that the current regulations are contrary to current health care practice and unduly burdensome. In order to be consistent with current health care practice, reduce regulatory burdens, and ensure patient safety, we are proposing to revise aspects of the current medical staff, nursing services, medical record services, pharmaceutical services, and anesthesia services CoPs.

We have developed this proposed rule taking into consideration comments received in response to the December 19, 1997 proposed rule as well as ongoing concerns expressed by the health care community since 1998 via the following public forums: Physicians' Regulatory Issues Team, (PRIT), our open door forums, written correspondence, and general questions. It is our intent to finalize this proposed rule within the 3-year publication timeframe specified in the MMA.

1. Completion of the Medical History and Physical Examination

The current medical history and physical examination requirement has been an ongoing focus and point of contention for the American Medical Association (AMA) and the American Podiatric Medical Association, Inc. (APMA). The current regulatory requirement states that a physical examination and medical history be done no more than 7 days before or 48 hours after an admission for each patient by a doctor of medicine or osteopathy, or, for patients admitted only for oromaxillofacial surgery, by an oromaxillofacial surgeon who has been granted such privileges by the medical staff in accordance with State law. These professional groups continue to challenge the timeframe for completion of the medical history and physical examination, as well as who is permitted to complete the history and physical examination. Questions have intensified as a result of the JCAHO's revised standard that states a history and physical examination performed within 30 days before admission may be used in the patient's medical record, provided any changes in the patient's condition are documented in the medical record at the time of admission. We believe that expanding the current requirement for completion of a medical history and physical examination from no more than 7 days before admission to within 30 days before admission supports safe patient care as long as the hospital ensures documentation of the patient's current condition in the medical record within 24 hours after admission.

On January 28, 2002, our Survey and Certification Group issued a memorandum (referenced as S&C–02–15) to the Associate Regional Administrators and State Survey Agency Directors addressing our position on hospital admission and presurgical history and physical examination requirements and the timing of the history and physical examination for hospital admissions. (A copy of the memorandum can be found on our Web site at *http://www.cms.hhs.gov/medicaid/survey-cert/012802.asp*). This proposed rule would codify the guidance provided in the January 28, 2002 memorandum, and published in the June 2003 issue of the Open Door Forum Newsletter.

In addition, we have received communications from the President of APMA and other podiatrists regarding their concerns that doctors of podiatric medicine are currently not permitted to perform a history and physical examination. This proposed rule addresses this concern as well.

We propose to revise the current medical staff requirement at § 482.22(c)(5) to specify that a medical history and physical examination must be completed no more than 30 days before or 24 hours after admission for each patient by a physician (as defined in section 1861(r) of the Act) or other qualified individual who has been granted these privileges by the medical staff in accordance with State law, and that the medical history and physical examination must be placed in the medical record within 24 hours after admission. We also propose revising the current Medical Records CoP at § 482.24(c)(2)(i) to reflect that a medical history and physical examination must be completed no more than 30 days before or 24 hours after admission, and placed in the patient's medical record within 24 hours after admission. We also propose revising § 482.22(c)(5) and § 482.24(c)(2)(i) to require that when a medical history and physical examination is completed within the 30 days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's current condition is completed. This updated examination must be completed and documented in the patient's medical record within 24 hours after admission.

2. Authentication of Verbal Orders

In the December 19, 1997 proposed rule, we solicited comments on authentication of medical record entries. Many in the hospital industry supported modifying and even eliminating the requirement. Many commenters believed that authentication does not add value to the quality of the medical record, especially after the service has been delivered or after the patient has been discharged. Other commenters believed that the absence of authentication leads to questions of accountability. In a related issue, we also solicited comments on the issue of whether a timeframe should be specified for signing verbal orders. Current requirements at § 482.23(c)(2)(ii) state that verbal orders for the administration of drugs or biologicals must be signed or initialed by the prescribing practitioner as soon as possible.

A key CMS goal is to protect the health and safety of patients. We believe that an authentication requirement is necessary to protect the health and safety of patients. Unless all medical record entries are authenticated, patient safety, quality of care, accountability and integrity of the patient medical record are comprised.

When a medical record entry is authenticated, the person authenticating the entry is assuming accountability for a service provided and verifying that the entry is complete and accurate. The authentication requirements decrease the risk of errors that could jeopardize a patient's health and safety by ensuring that all medical record entries, including verbal orders, are communicated and documented completely and accurately. The current regulations use the terms ''telephone orders'' and ''oral orders.'' For the purposes of this proposed rule, the term ''verbal orders'' is used to encompass both telephone and oral orders.

Authentication requirements enhance the accountability of a practitioner for verbal orders. Accountability means that the person who signed the entry is responsible for the care of the patient, and has verified that the order has been recorded completely and accurately. It does not mean that the person who authenticates a verbal order is necessarily the person who gave it. Authentication requirements also protect practitioners carrying out verbal orders by preventing those giving the

orders from later denying that the order was made.

Hospitals and practitioners perceive our current requirement that the prescribing practitioner must authenticate verbal orders as soon as possible as unnecessarily burdensome. We continue to receive questions from hospitals about authentication of verbal orders when the prescribing practitioner is not available (for example, the prescribing practitioner gives a verbal order, and then is ''off duty'' for a weekend or an extended period of time). The current regulation does not address the ability of a covering practitioner to authenticate a verbal order for the prescribing practitioner.

Based on discussions with the health care community concerning authentication and verbal orders, we are proposing a temporary exception to the authentication requirement, which will provide hospitals with flexibility while still maintaining an appropriate level of accountability.

We propose to retain and revise the current requirement for authentication of medical record entries at § 482.24(c)(1). This proposed provision states that all patient record entries must be legible, complete, dated, timed and authenticated in written or electronic form by whomever is responsible for providing or evaluating a service provided. Additionally, we would retain the current requirement that all orders, including verbal orders, must be dated, timed, and authenticated promptly by the prescribing practitioner, with the exception being that from the effective date of the final rule, to 5 years following the effective date of the final rule, all orders, including verbal orders, must be dated, timed, and authenticated promptly by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law, even if the order did not originate with him or her.

We believe this temporary revision to the authentication requirement will maintain an appropriate level of accountability while providing hospitals with flexibility until the advancement of health information technology is sufficient to allow the originating physician to authenticate his or her own orders in an efficient manner. Prior to the conclusion of the 5-year period, we will reevaluate this requirement, taking into account the advancement of health information technology.

We frequently receive questions about the timeframe for authentication of verbal orders and how we define ''as soon as possible.'' Some States have laws requiring authentication of verbal orders within 24 to 48 hours. Other State laws, however, do not address timeframes for authentication of verbal orders at all, and they defer to hospital policy. There is no consistency on this issue in the absence of a Federal requirement. Therefore, we propose revising § 482.24(c)(1)(iii) to require that all verbal orders must be authenticated based upon Federal and State law. We further propose that if there is no State law that designates a specific timeframe for authentication of verbal orders, then verbal orders must be authenticated within 48 hours. We invite public comment on this proposed approach to the timeframe for authentication of verbal orders. Hospitals would no longer be burdened by the requirement that verbal orders must be signed by the practitioner who gave the order. Any practitioner responsible for the care of the patient who is authorized by hospital policy and permitted by State law to independently write a specific order would be permitted to authenticate a verbal order, even if the order did not originate with him or her. In the interest of public health and safety, the proposed requirement would also establish a consistent timeframe for the authentication of verbal orders when State law does not specify a timeframe for such orders.

We also propose to revise related nursing service requirements at § 482.23(c)(2) that address documentation of orders for drugs and biologicals. We propose that with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals be documented and signed by a practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law. This proposed requirement would provide hospitals, in conjunction with their medical staff, the ability to determine who may authenticate verbal orders for whom, as well as identify and implement systems and processes that meet the safety needs of their patient population.

As stated earlier, authentication requirements serve to protect practitioners carrying out verbal orders by preventing those giving the orders from later denying that the order was made. However, we are requesting comments on whether there are recurring problems with prescribing practitioners denying that they gave a verbal order after the verbal order was carried out. We are also requesting public comment on the perceived impact of this proposed rule on this potential issue. We expect that a hospital's governing body and administration would address any issues through the hospital's Quality Assessment and Performance Improvement Program and credentialing process.

We propose retaining the current requirements at § 482.23(c)(2)(iii) that state that verbal orders are to be used infrequently. The use of verbal orders should not be a common practice. Verbal orders should be used only to meet the urgent care needs of the patient when it is not feasible for the ordering practitioner to immediately communicate the order in written or electronic form. Verbal orders are not to be used for the convenience of the ordering practitioner. We also propose retaining the current requirement that when verbal orders are used, they must only be accepted by persons that are authorized to do so by hospital policies and procedures, consistent with State and Federal law.

3. Securing Medications

We have had ongoing dialogue with the American Society of Anesthesiologists (ASA) and the JCAHO regarding the current requirement that all drugs and biologicals be kept in a locked storage area. The dialogue has centered on locked anesthesia carts in the operative suite. Anesthesiologists take issue with the fact that anesthesia carts containing non-controlled drugs must be kept locked or under constant observation inside a secure operative suite. Anesthesiologists contend that it is standard practice for the anesthesiologist to set up an anesthesia cart in advance preparation for use in the operative suite. They contend that the same is true for epidural carts in a labor and delivery suite. This practice is supported by the ASA. (See the ASA Position Statement approved by the ASA Executive Committee, October 2003, entitled ''Security of Medications in the Operating Room.'')

We have also had ongoing dialogue with the JCAHO and have received numerous questions from the healthcare community regarding patient self-administration of medications. It is current practice for hospitals to give patients access to urgently needed drugs, such as nitroglycerine tablets and inhalers, at the bedside. It is also current practice to place selected nonprescription medications at the bedside for the patient's use (for example, lotions and creams, rewetting

eye drops.) Hospitals have also developed formalized patient medication self-administration programs for select populations of patients in collaboration with the medical staff, nursing, and pharmacy that include the development of the necessary hospital policies and procedures to ensure patient safety and security of medications. The current hospital CoPs do not contemplate medications at the patient's bedside as the current requirement mandates that all medications be in locked storage.

Therefore, we propose to revise the provision at § 482.25(b)(2) to require that all drugs and biologicals be kept in a secure area, and locked when appropriate. We propose that drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 must be kept locked within a secure area. We further propose that only authorized personnel may have access to locked areas. We believe this addresses the identified issues, affords hospitals flexibility in implementation, and is more patient-focused and outcome oriented than the current requirements.

We do not expect the proposed revision to alter the appropriate safety mechanisms that hospitals use to control medications and ensure the health and safety of its patients. All controlled substances need to be securely locked. These drugs must be tightly controlled and accounted for as required by Federal law and regulations. Non-controlled drugs, however, do not necessarily need to be locked. They may be secured, and locked when appropriate, to prevent diversion or tampering with the medications. A medication is considered secure if unauthorized persons are prevented from obtaining access. Medications should not be stored in areas that are readily accessible to unauthorized persons. For example, medications left in an unlocked drawer in a patient waiting area or patient examination room would not be considered secure. However, if medications are kept in a private office, or other area where patients and visitors are not allowed without the supervision or presence of a health care professional (for example, procedure room), they are considered secure, even if not locked. Areas restricted to authorized personnel only would generally be considered ''secure'' areas. If medication security becomes a problem, the hospital is expected to evaluate its current medication control policies and procedures, and implement the necessary systems and processes to ensure that the problem is corrected and that patient health and safety are maintained.

4. Completion of the Postanesthesia Evaluation

The medical community has repeatedly requested that we modify the current hospital anesthesia regulation that requires the individual who administers the anesthesia to write the follow up report. The medical community requested that CMS allow the postanesthesia report to be written by an individual qualified to administer anesthesia. This issue has been identified as particularly important by the PRIT, open door forums participants and through general questions submitted to CMS. Discussions with the health care community continue to indicate that the current postanesthesia evaluation requirement at § 482.52(b)(3) is: (1) Not consistent with the current preanesthesia evaluation requirement; (2) not reflective of current practice; and (3) an unnecessary burden for hospitals and practitioners that provide anesthesia. This requirement has also been a priority issue for the American Medical Association (AMA). These ongoing discussions have served as the impetus for us to propose revisions to this requirement in the current anesthesia services CoP. The proposed revision of this regulation would be consistent with the current regulation at § 482.52(b)(1) addressing preanesthesia reports. This requirement states, ''A preanesthesia evaluation by an individual qualified to administer anesthesia under paragraph (a) of this section performed within 48 hours prior to surgery.'' Implementation of the proposed change allowing the postanesthesia evaluation report to be written by an individual qualified to administer anesthesia would give hospitals greater flexibility in meeting the needs of patients and impose less burden than the current requirement.

B. Summary of the Proposed Rule

Condition of Participation: Medical Staff (§ 482.22)

Section 482.22(c)(5)

This proposed requirement would expand the timeframe for completion of the patient's medical history and physical examination and would expand the number of permissible professional categories of individuals who may perform the medical history and physical examination. It would require that each patient receive a medical history and physical examination, to be completed no more than 30 days before or 24 hours after admission, and placed in the patient's medical record within 24 hours after admission. A physician (as defined in section 1861(r) of the Act), or other qualified individual who has been granted these privileges by the medical staff in accordance with State law, could complete the medical history and physical examination. In addition, when a medical history and physical examination is completed within the 30 days before admission, the hospital would be required to ensure that an updated medical record entry documenting an examination for any changes in the patient's current condition is completed. This updated examination would be completed and documented in the patient's medical record within 24 hours after admission.

Condition of Participation: Nursing Services (§ 482.23)

Section 482.23(c)(2)

This proposed requirement would clarify that with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals would be documented and signed by a practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write these orders by hospital policy in accordance with State law.

Section 482.23(c)(2)(i) and (c)(2)(ii)

This proposed requirement would reinforce the current regulations that verbal orders are to be used infrequently, and, when used, be accepted only by persons authorized by hospital policy and procedures consistent with Federal and State law.

Condition of Participation: Medical Record Services (§ 482.24)

Section 482.24(c)(1)

This proposed requirement would maintain and reinforce the current regulation for authentication of all medical record entries. It would require that all patient medical record entries be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating a service provided.

Section 482.24(c)(1)(i)

This proposed provision would require that all orders, including verbal orders, be dated, timed, and authenticated promptly by the prescribing practitioner, except as noted in subsection (ii).

Section 482.24(c)(1)(ii)

This proposed provision would permit a temporary exception to the requirement that all orders, including verbal orders, be dated, timed, and authenticated promptly by the prescribing practitioner. For a period of 5 years beginning with the effective date of the final rule, verbal orders would not need to be signed by the prescribing practitioner but could be authenticated by another practitioner responsible for the care of the patient. We believe this requirement would reduce burden and provide flexibility and clarity for hospitals in meeting the requirements for authentication of verbal orders.

Section 482.24(c)(1)(iii)

This proposed provision would specify that all verbal orders be authenticated based on Federal and State law. If there were no State law that designates a specific timeframe for the authentication of verbal orders, then verbal orders would need to be authenticated within 48 hours.

In addition, a consistent timeframe for authentication of verbal orders would be established to ensure patient health and safety when State law does not designate a specific timeframe for the authentication of verbal orders and defers to hospital policy.

Section 482.24(c)(2)(i) and (c)(2)(ii)

The proposed requirements would be revised to be consistent with the changes in the Medical staff CoP. These regulations specify documentation requirements for medical history and physical examinations. The two proposed provisions would require evidence of the following: (1) A medical history and physical examination completed no more than 30 days before or 24 hours after admission. The medical history and physical must be placed in the patient's medical record within 24 hours after admission; (2) an updated medical record entry documenting an examination for any changes in the patient's condition when the medical history and physical examination was completed within 30 days before admission. This updated examination would need to be completed and documented in the patient's medical record within 24 hours after admission.

Condition of Participation: Pharmaceutical Services (§ 482.25)

Section 482.25(b)(2)(i)

This proposed provision would specify that all drugs and biologicals be kept in secure areas, and locked when appropriate.

Section 482.25(b)(2)(ii)

This proposed provision would require that scheduled drugs (II, III, IV, and V), as outlined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, must be locked within a secure area.

Section 482.25(b)(2)(iii)

This proposed requirement states that only authorized personnel would have access to locked areas.

Condition of Participation: Anesthesia Services (§ 482.52)

Section 482.52(b)(3)

This proposed requirement would permit the postanesthesia evaluation for inpatients to be completed and documented by any individual qualified to administer anesthesia. Implementation of this standard would give hospitals greater flexibility in meeting the needs of patients and decrease hospital and practitioner burden.

III. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

The following information collection requirements and associated burdens are subject to the PRA.

Condition of Participation: Medical Staff (§ 482.22)

Paragraph (c) requires that a hospital have bylaws that include specified information. This proposed rule would revise some of the contents required in the bylaws.

The burden associated with these proposed requirements is the time spent by the hospital to revise their bylaws. We believe that this proposed requirement reflects customary and usual business practice. Thus, the burden is not subject to the PRA in accordance with section 1320.3(b)(2). In addition, we estimate that there are fewer than 10 new hospitals per year that would have to comply, on a one-time basis, with this requirement. Information collection requirements affecting fewer that 10 entities are exempt from the PRA.

Condition of Participation: Nursing Services (§ 482.23)

Proposed paragraph (c) of this section would require with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals be documented and signed by a practitioner who is responsible for the care of the patient and authorized to write orders by hospital policy in accordance with State law.

The burden associated with these proposed requirements is the time spent by the practitioner in documenting and signing orders. We believe that these proposed requirements reflect customary and usual business and medical practice. Thus, the burden is not subject to the PRA in accordance with section 1320.3(b)(2).

Condition of Participation: Medical Record Services (§ 482.24)

Proposed paragraph (c) of this section would require that all patient medical record entries be legible, complete, dated, timed and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided.

All orders, including verbal orders, would have to be dated, timed, and authenticated promptly by the prescribing practitioner, except for a 5-year period of time beginning with the effective date of the final rule. During this 5-year time period, all orders, including verbal orders must be dated, timed and authenticated promptly by a practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law. This exception is time limited in anticipation that the advancement of health information technology will facilitate a prescribing practitioner authenticating his or her own orders.

Verbal orders would be required to be authenticated based upon Federal and State law. If there were no State law that designated a specific timeframe for the authentication of verbal orders, then verbal orders would need to be authenticated within 48 hours. Records must include evidence of a medical history and physical examination completed no more than 30 days before or 24 hours after admission, and placed in the patient's medical record within 24 hours after admission. When the medical history and physical examination are completed within 30 days before admission, the hospital must ensure that documentation of an examination of the patient's current condition is placed in the medical record within 24 hours after admission.

The burden associated with these proposed requirements would be the time spent in signing and dating medical record entries and in placing evidence of a history and physical examination in the patient's records. We believe that these requirements reflect customary and usual business and medical practice. Thus, the burden is not subject to the PRA in accordance with section 1320.3(b)(2).

Condition of Participation: Anesthesia Services (§ 482.52)

Under proposed paragraph (b)(3) of this section, with respect to inpatients, a postanesthesia evaluation is to be completed and documented by an individual qualified to administer anesthesia within 48 hours after surgery.

The burden associated with these proposed requirements would be the time spent in documenting the evaluation. We believe that these requirements reflect customary and usual medical practice. Thus, the burden is not subject to the PRA in accordance with section 1320.3(b)(2).

We have submitted a copy of this proposed rule to OMB for its review of the proposed information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Jim Wickliffe, CMS–3122–P Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer, CMS–3122–P, *Christopher_Martin@omb.eop.gov* Fax (202) 395–6974.

IV. Response to Comments

Based on the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impact of this proposed 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 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 costs/savings any one year). This proposed rule would impose minimal additional costs on hospitals. In fact, hospitals may realize some minimal cost savings. We believe the cost of implementing these provisions borne by hospitals would be limited to a one time cost associated with completing minor revisions to portions of the medical staff bylaws, and policies and procedures related to the requirements for history and physical examinations, authentication of verbal orders, securing medications, and postanesthesia evaluations, as well as communicating these changes to affected staff. The changes contained within this proposed rule are consistent with current practice, would decrease existing burden, and would provide hospitals with more flexibility in meeting CoP requirements. Although we believe that implementation of this proposed rule will result in greater efficiencies for hospitals, we do not believe that the proposed changes will result in significant savings near the $100 million threshold. We believe these benefits will offset the implementation costs that a hospital would incur, and, therefore, be budget neutral. Therefore, we have determined that it is not considered a major rule and no RIA is required. There are no proposed requirements for hospitals to initiate new processes of care, reporting, or increases in the amount of time spent providing or documenting patient care services. However, we lack data to quantify the effects of this proposed rule. We invite public comment on the impact on hospitals and practitioners. The RFA requires agencies to analyze options for regulatory relief of small entities. 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 receipts of $6 million to $29 million or less annually (65 FR 69432). For purposes of the RFA, all hospitals are considered to be small entities. However, the nature of this proposed rule is such that no additional regulatory burden will be placed upon hospitals. Instead, burden would be decreased for hospitals by this proposed regulation. Therefore, no regulatory relief options are considered.

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 603 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. We do not anticipate that the operations of a substantial number of small rural hospitals will be significantly impacted.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. However, we lack data to quantify the effects of this proposed rule on small entities or small rural hospitals. We invite public comment on the impact of this proposed rule on small entities and 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 that may result in an expenditure in any 1 year by State, local, or tribal governments, in

the aggregate, or by the private sector, that exceeds the inflation adjusted threshold of $110 million. This proposed rule would place no additional burden for implementation on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this proposed rule and have determined that it would not have a negative impact on the rights, rules, and responsibilities of State, local or tribal governments.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this proposed rule.

List of Subjects in 42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 482 as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395hh).

2. Section 482.22 is amended by revising paragraph (c)(5) to read as follows:

§ 482.22 Condition of participation: Medical staff.

* * * * *

(c) * * *

(5) Include a requirement that a medical history and physical examination be completed no more than 30 days before or 24 hours after admission for each patient by a physician (as defined in section 1861(r) of the Act), or other qualified individual who has been granted these privileges by the medical staff in accordance with State law. The medical history and physical examination must be placed in the patient's medical record within 24 hours after admission. When the medical history and physical examination are completed within 30 days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed. This updated examination must be completed and documented in the patient's medical record within 24 hours after admission.

* * * * *

3. Section 482.23 is amended by revising paragraph (c)(2) to read as follows:

§ 482.23 Condition of participation: Nursing services.

* * * * *

(c) * * *

(2) With the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals must be documented and signed by a practitioner who is authorized to write orders by hospital policy and in accordance with State law, and who is responsible for the care of the patient as specified under § 482.12(c).

(i) If verbal orders are used, they are to be used infrequently.

(ii) When verbal orders are used, they must only be accepted by persons who are authorized to do so by hospital policy and procedures consistent with Federal and State law.

* * * * *

4. Section 482.24 is amended by—

A. Revising paragraph (c)(1).

B. Revising paragraph (c)(2)(i).

The revisions read as follows:

§ 482.24 Condition of participation: Medical record services.

* * * * *

(c) * * *

(1) All patient medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures.

(i) All orders, including verbal orders, must be dated, timed, and authenticated promptly by the prescribing practitioner, except as noted in paragraph (c)(1)(ii) of this section.

(ii) For the period from the effective date of the final rule, to 5 years following the effective date of the final rule, all orders, including verbal orders, must be dated, timed, and authenticated by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.

(iii) All verbal orders must be authenticated based upon Federal and State law. If there is no State law that designates a specific timeframe for the authentication of verbal orders, then verbal orders must be authenticated within 48 hours.

(2) * * *

(i) Evidence of—

(A) A medical history and physical examination completed no more than 30 days before or 24 hours after admission. The medical history and physical examination must be placed in the patient's medical record within 24 hours after admission.

(B) An updated medical record entry documenting an examination for any changes in the patient's condition when the medical history and physical examination are completed within 30 days before admission. This updated examination must be completed and documented in the patient's medical record within 24 hours after admission.

* * * * *

5. Section 482.25 is amended by revising paragraph (b)(2) to read as follows:

§ 482.25 Condition of participation: Pharmaceutical services.

* * * * *

(b) * * *

(2)(i) All drugs and biologicals must be kept in a secure area, and locked when appropriate.

(ii) Drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 must be kept locked within a secure area.

(iii) Only authorized personnel may have access to locked areas.

* * * * *

6. Section 482.52 is amended by revising paragraph (b)(3) to read as follows:

§ 482.52 Condition of participation: Anesthesia services.

* * * * *

(b) * * *

(3) With respect to inpatients, a postanesthesia evaluation must be completed and documented by an individual qualified to administer anesthesia as specified in paragraph (a) of this section within 48 hours after surgery.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 1, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 2, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 05–5916 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 15]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public conference.

SUMMARY: FRA is issuing notice of a public conference that will be held in Fort Lauderdale, FL to discuss the appropriate excess risk estimate that should be applied to highway-rail grade crossings that are currently subject to FRA Emergency Order 15 (''E.O. 15''). The public conference will provide an opportunity for interested parties to provide information to FRA on the effect of silencing the locomotive horn at highway-rail grade crossings that are currently subject to E.O. 15.

DATES: Public Conference: The public conference will be held on Friday, April 15, 2005, beginning at 9 a.m.

ADDRESSES: The public conference will be held at the Holiday Inn Fort Lauderdale Beach, 999 Fort Lauderdale Beach Blvd., Fort Lauderdale, Florida 33304.

FOR FURTHER INFORMATION CONTACT: Ivornette Lynch, FRA Docket Clerk, Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6030); Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6299); or Kathy Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: Any person who would like to provide an oral statement at the public conference should notify the FRA Docket Clerk at least 10 calendar days prior to the date of the public conference and provide either a telephone number or e-mail address at which the person may be contacted. (Please refer to the **FOR FURTHER INFORMATION CONTACT** section for contact information for the FRA Docket Clerk.) Any speaker who will be speaking on behalf of an organization should also provide the name of the organization that he/she will be representing.

FRA will attempt to accommodate all persons who wish to provide an oral statement. However, depending on the number of conference participants, FRA may find it necessary to limit the length of oral statements, in order to accommodate as many people as possible. Conference participants may choose to submit complete written statements for inclusion in the record, while providing an oral summary of their written statements at the conference.

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, etc. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

Effective July 1, 1984, a Florida statute authorized counties and municipalities to restrict the nighttime sounding of the locomotive horn by intrastate railroads at highway-rail grade crossings equipped with flashing lights, bells, crossing gates, and advance warning signs indicating that the locomotive horn would not be sounded at night. However, FRA noted an alarming increase in the number of accidents at highway-rail grade crossings subject to these nighttime whistle bans. Therefore, FRA issued Emergency Order 15 (''E.O. 15'') on July 26, 1991, which required the Florida East Coast Railway Company (an intrastate railroad) to sound the locomotive horn when approaching and entering public highway-rail grade crossings. E.O. 15 was later amended to allow communities to establish quiet zones, provided FRA approval was obtained prior to the implementation of sufficient safety measures at every highway-rail grade crossing within the proposed quiet zone to alleviate excess risk resulting from the absence of the warning provided by the locomotive horn.

On November 2, 1994, Congress passed Public Law 103–440 (''Act''), which added § 20153 to title 49 of the United States Code. This Act required FRA to issue regulations that would require railroads to sound the locomotive horn at public grade crossings, but gave FRA the authority to make reasonable exceptions. After issuing a Notice of Proposed Rulemaking on January 13, 2000 (65 FR 2230), FRA published an Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings on December 18, 2003 (68 FR 70586).

Under the Interim Final Rule, public authorities are authorized to create quiet zones by implementing supplementary safety measures and alternative safety measures to offset the excess risk that results from prohibiting routine use of the locomotive horn at highway-rail grade crossings within the proposed quiet zone. However, the Interim Final Rule provides greater flexibility in the types of safety improvements that can be employed within a proposed quiet zone than E.O. 15. Therefore, FRA stated in the Interim Final Rule that it would re-examine the effect of silencing the locomotive horn at E.O. 15 grade crossings.

The upcoming public conference will provide an opportunity for interested parties to provide information to FRA on the effect of silencing the locomotive horn at highway-rail grade crossings that are currently subject to E.O. 15. In particular, FRA is soliciting comments on whether the national excess risk estimate on the effect of silencing the locomotive horn at highway-rail grade crossings equipped with flashing lights and gates (*i.e.*, 66.8% increase in risk) should be applied to E.O. 15 grade crossings. In that regard, participants are requested to address FRA's findings in the report titled, ''Florida's Train Whistle Ban'', that accident frequency increased by 195% when train horns were banned at nighttime at crossings later subject to E.O. 15. In the alternative, should a regional excess risk estimate be applied to E.O. 15 grade crossings? Or, would a nighttime-specific excess risk estimate be more appropriate?

Conference participants are asked to review the following documents available in the electronic docket of this rulemaking at *http://dms.dot.gov* prior to the conference: Document no. FRA–1999–6439–16 (''Florida's Train Whistle Ban''); Document no. FRA–1999–6439–2391 (''Analysis of the Safety Impact of Train Horn Bans at Highway-Rail Grade Crossings: An Update Using 1997–2001 Data''); and Document no. FRA–1999–6439–2392 (''Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings'').

Issued in Washington, DC on March 21, 2005.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 05–5906 Filed 3–24–05; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 70, No. 57

Friday, March 25, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 18, 2005, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Mercer Human Resource Consulting, 1166 Avenue of the Americas, Conference Room, 30th Floor, New York, NY.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Mercer Human Resource Consulting, 1166 Avenue of the Americas, Conference Room, 30th Floor, New York, NY on Monday, April 18, 2005, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 15, 2005.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 05–5959 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 21, 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: West Copper River Delta Sport Fish Use Survey.

OMB Control Number: 0596–NEW.

Summary of Collection: The current level of use and the present habitat conditions are unknown for specific stream systems on the West Copper River Delta (WCRD). The Alaska Department of Fish and Game currently collects use and harvest data for the area. However, this data is not stream or Forest Service (FS) land specific, but rather it is grouped across a large area of streams accessible via the Cordova Road System. This data does not allow sport fish use to be categorized at a small spatial scale. Sport fish use data needs to be collected at a smaller scale so that manager can respond to sport fish issues at the individual stream level. The Cordova Ranger District proposed to collect sport fish use data on streams flowing through National Forest lands in the Cordova area. The Cordova Ranger District proposes to collect the information in three ways: person-to-person interviews at the airport and at ferry terminals, mail-in questionnaires distributed to local residents, and aerial counts of anglers.

Need and Use of the Information: The collected information will be used to monitor and manage sport fish use on the WCRD. The information will allow National Forest land managers to quantify the amount of sport fish use and describe the pattern of that use across the landscape. The information may also help to locate access issues, improve access, identify potential areas of habitat degradation and rehabilitate habitat, build or improve recreation facilities/parking, focus habitat monitoring in concentrated areas, and focus public education efforts to the appropriate user group: Local vs. non-local.

Description of Respondents: Individuals or households.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 958.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–5878 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV05–996–1–Notice]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection as Board members for terms of office ending June 30, 2008. Selected nominees sought by this action would replace those six producer and industry representatives who are currently serving for the initial term of office that ends June 30, 2005. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before April 30, 2005.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737: Telephone: (301) 734–5243; Fax: (301) 734–5275; E-mail: *dawana.clark@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term ''peanut industry representatives'' includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would replace one producer and one industry member from each peanut producing region who served for the initial term of office that ends June 30, 2005. New members would serve for a 3-year term of office ending June 30, 2008.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark. Copies of this form may be obtained at the Internet site: *http://www.ams.usda.gov/fv/peanut-farmbill.htm*, or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: March 21, 2005.

Kenneth Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–5900 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This document announces the sign-up CSP–05–01 for the Conservation Security Program (CSP). This sign-up will be open from March 28, 2005, through May 27, 2005, in selected 8-digit watersheds in all 50 States and the Caribbean.

DATES: The administrative actions announced in the notice are effective on March 25, 2005.

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Branch Chief—Stewardship Programs, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *craig.derickson@usda.gov*, Attention: Conservation Security Program.

SUPPLEMENTARY INFORMATION: In an Interim Final Rule published concurrent with this notice, USDA's Natural Resources Conservation Service (NRCS) established the implementing regulations for Conservation Security Program (CSP). The CSP is a voluntary program administered by NRCS using authorities and funds of the Commodity Credit Corporation, that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands.

This document announces the CSP–05–01 sign-up that will be from March 28, 2005, through May 27, 2005, in selected 8-digit watersheds in all 50 States and the Caribbean, which can be viewed at *http://www.nrcs.usda.gov/programs/csp/2005_CSP_WS/index.html*. These watersheds were selected using the process set forth in the May 4, 2004, notice to the **Federal Register**. In addition to other data sources, this process used National Resources Inventory data to assess land use, agricultural input intensity, and historic conservation stewardship in watersheds nationwide. NRCS State Conservationists recommended a list of potential watersheds after gaining advice from the State Technical Committees. The final selection of FY

2005 watersheds was announced by the Secretary of Agriculture on November 1, 2004. NRCS has decided to allow limited sign-up in the 2004 sign-up watersheds to bring the total eligible watersheds to 220. The sign-up will only include those producers who do not have an existing CSP contract.

To be eligible for CSP, a majority of the agricultural operation must be within the limits of one of the selected watersheds. Applications which meet the minimum requirements as set forth in the interim final rule (listed below) will be placed in enrollment categories for funding consideration. Categories will be funded in order from A through E until funds are exhausted. If funds are not available to fund an entire category, then the applications will fall into subcategories and funded in order until funds are exhausted.

Applicants can submit only one application for this sign-up. Participants in an existing CSP contract are not eligible to be an applicant or a participant on more than one contract. Therefore anyone receiving a payment from an existing CSP contract is not eligible to apply for this sign-up or to receive payment in the form of a share from any new contract resulting from this sign-up.

Producers should begin the application process by filling out a self-assessment and then to determine if they meet the basic qualification for CSP. Self-assessment workbooks are available in hard copy at USDA Service Centers within the watersheds, and electronically for download or an interactive Web site linked from *http://www.nrcs.usda.gov/programs/csp/2005_CSP_WS/index.html.* The self-assessment workbook includes a benchmark inventory where the applicant documents the conservation practices and activities that are on going on their operation. This benchmark inventory serves as the basis for the stewardship plan. Once the producer determines that they meet the minimum requirements for CSP, as outlined in the workbook, they should make an appointment for an interview to discuss their application with the NRCS local staff.

In order to apply, applicants must submit:

1. A completed self-assessment workbook, including the benchmark inventory;

2. Documentation for calendar years 2003 and 2004 to show the stewardship completed including fertilizer, nutrient, and pesticide application schedules, tillage, and grazing schedules if applicable.

3. Completed CCC–1200 available through the self-assessment online guide, Web site, and any USDA Service Center.

Applicants are encouraged to attend preliminary workshops, which will be announced locally, the basic qualifications will be explained, and assistance provided to understand the self-assessment workbook and benchmark inventory.

CSP is offered at three tiers of participation. Some payments are adjusted based on the tier, and some payments are tier-neutral. See payment information below.

Minimum Tier Eligibility and Contract Requirements

The following are the minimum tier eligibility and contract requirements:

CSP Tier I—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for any eligible landuse on part of the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

CSP Tier II—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for all eligible land uses on the entire agricultural operation. Additionally, the applicant must agree to address another significant resource concern applicable to their watershed to be completed by the end of the contract period. If the applicable resource concern is already addressed or does not pertain to the operation, then this requirement is waived.

CSP Tier III—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the existing resource concerns listed in Section III of the NRCS Field Office Technical Guide (FOTG) with a resource management system that meets the minimum level of treatment for all eligible land uses on the entire agricultural operation.

Delineation of the Agriculture Operation

Delineating an agriculture operation for CSP is an important part in determining the Tier of the contract, stewardship payments, and the required level of conservation treatment needed for participation. The applicant will delineate the agriculture operation to include all agricultural lands, and other lands such as farmstead, feedlots, and headquarters and incidental forestlands, under the control of the participant and constituting a cohesive management unit that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. In delineating the agriculture operation, Farm Service Agency farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agriculture operation.

Minimum Eligibility Requirements

To be eligible to participate in CSP, the applicants must meet the requirements for eligible applicants, the land offered under contract must meet the definition of eligible land, and the application must meet the conservation standards for that land as described below.

Eligible Applicants

To be eligible to participate, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions.

(2) Meet the Adjusted Gross Income requirements.

(3) Show control of the land for the life of the proposed contract period by providing NRCS with either written evidence or assurance of control from the landowner. In the case of land allotted by the Bureau of Indian Affairs (BIA) or Tribal land, there is considered to be sufficient assurance of control.

(4) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agriculture operation. Landlords and owners are ineligible to submit an application for exclusively cash rented agriculture operations.

(5) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a) in the Interim Final Rule;

(6) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to, information related to eligibility criteria in this sign-up announcement; and information to verify the applicant's status as a beginning or limited resource farmer or rancher if applicable.

Eligible Land

To be eligible for enrollment in CSP, land must be:

(1) Private agricultural land;

(2) Private non-industrial forested land that is an incidental part of the agriculture operation (limited to up to ten percent of the contract acres);

(3) Agricultural land that is Tribal, allotted, or Indian trust land;

(4) Other incidental parcels (limited to up to ten percent of the contract acres), as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, linear practices, field borders, turn rows, intermingled small wet areas or riparian areas); or

(5) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural land or enrolled parcel such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas (limited to up to ten percent of the contract acres). Other land must be treated in Tier III contracts.

Land Not Eligible for Enrollment in CSP

The following lands are ineligible for enrollment in CSP:

(1) Land enrolled in the Conservation Reserve Program, the Wetlands Reserve Program, or the Grassland Reserve Program; and

(2) Public land including land owned by a Federal, State, or local unit of government.

Land referred to above may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets eligibility criteria for the agricultural operation and may be described in the Conservation Stewardship Plan.

Land Not Eligible for Any Payment Component in CSP

Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002, is not eligible for any payment component in CSP.

Conservation Standards for Tier I and Tier II

The following conservation standards apply for Tier I and Tier II:

1. The minimum level of treatment on cropland;

i. The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index is positive; and

ii. The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment addresses the risks that nutrients, pesticides, sediment, and salinity present to water quality by meeting or exceeding the quality criteria for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water, if applicable.

2. The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management, which enhances the soil resource by following a grazing management plan that provides for: a forage-animal balance, proper livestock distribution, timing of use, and managing livestock access to water courses.

Conservation Standards for Tier III

The minimum level of treatment for Tier III on any eligible landuse is:

1. Assuring all that riparian corridors, including streams and natural drainages, within the agricultural operation are buffered to restore, protect, or enhance riparian resources. Riparian corridors, as appropriate, will be managed or designed to intercept sediment, nutrients, pesticides, and other materials in surface runoff; reduce nutrients and other pollutants in shallow subsurface water flow; lower water temperature; and provide litter fall or structural components for habitat complexity or to slow out-of-bank floods; and

2. Meeting the quality criteria for the local NRCS FOTG for all existing resource concerns with these exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use index value of at least 50; and

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 of the habitat potential using a general or species specific habitat assessment guide.

CSP Contract Payments and Limits

CSP contract payments include one or more of the following components subject to the described limits:

- An annual per acre stewardship component for the benchmark conservation treatment. This component is calculated separately for each land use by multiplying the number of acres times the tier factor (0.05 for Tier I, 0.10 for Tier II, and 0.15 for Tier III) times the stewardship payment rate established for the watershed times the tier reduction factor (0.25 for Tier I and 0.50 for Tier II, and 0.75 for Tier III).
- An annual existing practice component for maintaining existing conservation practices. Existing practice payments will be calculated as a flat rate of 25 percent of the stewardship payment.
- A new practice component for additional practices on the watershed specific list. New practice payments for limited resource farmers and beginning farmers will be made at not more than 65 percent cost-share rate. New practice payments for all other contracts will be made at not more than a 50 percent cost-share rate. All new practice payments are limited to a $10,000 cumulative total for the contract.
- An annual enhancement component for exceptional conservation effort and additional conservation practices or activities that provide increased resource benefits beyond the required conservation standard noted above. This payment will be calculated at a variable payment rate for enhancement activities that are part of the benchmark inventory. The annual enhancement payment for the first contract year for the enhancements documented in the benchmark inventory will be calculated at a rate initiating at 150 percent for the 2005 contract year and then at a declining rate for the remainder of the contract of 90 percent for 2006, 70 percent for 2007, 50 percent for 2008, 30 percent for 2009, 10 percent for 2010 and zero after 2010. This is intended to provide contract capacity to add additional enhancements in the out-years and to encourage participants to make continuous improvements to their operation. In order to maintain the same level of payment over the life of the contract, the participant may add additional enhancement activities of their choice in later years. The additional enhancements will be paid at a flat rate of 100 percent. The total of all enhancement payments in any one year will not exceed $13,750 for Tier I, $21,875 for Tier II, and $28,125 for Tier III annually. The NRCS Chief may allow for special enhancements for producer-based studies and assessments on a case-by-case watershed basis.
- An advance enhancement payment is available in the FY 2005 sign-up. The

advance enhancement payment is available to contracts with an initial enhancement payment as determined in the benchmark inventory and interview. The advance enhancement payment would shift a portion of that annual enhancement payment amount into the first-year payment and deduct it from the following years' payments.

Tier I contracts are for a five-year duration. Tier II and Tier III contracts are for a five- to 10-year duration at the option of the participant. Participants who move from Tier I to Tier II or III may increase their contract length to up to ten years from the original contract date.

Total annual maximum contract payment limits are $20,000 for Tier I, $35,000 for Tier II, and $45,000 for Tier III, including any advance enhancement payment.

The payment components are tailored for the selected watersheds. For more details, call or visit the local USDA Service Center, or view on the Web at *http://www.nrcs.usda.gov/programs/csp/2005_CSP_WS/index.html.*

Enhancement Components Available in This Sign-up

The following are the enhancement components available this sign-up:

1. Additional conservation treatment above the quality criteria for soil quality, nutrient management, pest management, irrigation water management, grazing, air and energy management; and

2. Addressing locally identified conservation needs shown on the watershed specific enhancement lists.

The payment components are tailored for the selected watersheds. For more details, call or visit the local USDA Service Center, or view on the Web at *http://www.nrcs.usda.gov/programs/csp/2005_CSP_WS/index.html.*

The Administration budget projects that between 12,000 and 13,000 contracts will be available under this sign-up, with roughly 45 percent of those in Tier I, 45 percent in Tier II, and 10 percent in Tier III.

CSP Enrollment Categories and Subcategories

Technical adjustments to the enrollment categories were made based on field testing of the criteria published in a previous notice. This notice provides updated enrollment category criteria.

The CSP will fund the enrollment categories A through E in alphabetical order (Attachment #1). If an enrollment category cannot be completely funded, then subcategories will be funded in the following order:

1. Applicant is a limited resource producer;

2. Applicant is a participant in an on-going monitoring program;

3. Agricultural operation in a designated water conservation area or aquifer zone;

4. Agricultural operation in a designated drought area;

5. Agricultural operation in a designated water quality area, such as designated watersheds with Total Maximum Daily Loading (TMDL) limits with a priority on pesticides;

6. Agricultural operation in a designated water quality area, such as designated watersheds with TMDL limits with a priority on nutrients;

7. Agricultural operation in a designated water quality area, such as designated watersheds with TMDL limits with a priority on sediment;

8. Agricultural operation in a designated non-attainment area for air quality or other local or regionally designated air quality zones;

9. Agricultural operation in a designated area for threatened and endangered species habitat creation and protection;

10. Participating in an ongoing watersheds plan or conservation project;

11. Agricultural operation is intermingled with public land where there is no way to distinguish the public from the private land for management purposes; and

12. Other applications.

Designated means ''officially assigned a priority by a Federal, State, or local unit of government'' prior to this notice. If a subcategory cannot be fully funded, applicants will be offered the FY 2005 CSP contract payment on a prorated basis.

Signed in Washington, DC, on March 18, 2005.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

2005 CSP Enrollment Categories—Criteria by Land Use and Category

CROPLAND

[Row crops, closely grown crops, hay or pasture in rotation with row or closely grown crops, orchards, vineyards, horticultural crops, and permanent hayland]

Category	Criteria	
	Soil conditioning index	Stewardship practices and activities (from list below) in place for at least two years
A	SCI of ≥ 0.30 *or* STIR rating of ≤ 15	At least 2 unique practices activities from each area of Soil Quality, Water Quality, and Wildlife Habitat.
B	SCI of ≥ 0.20 *or* STIR rating of ≤ 30	At least 1 unique practice or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat, and one additional practice from any of the areas.
C	SCI of ≥ 0.10 *or* STIR rating of ≤ 60	At least 1 unique practice or activity from each area of Soil Quality, Water Quality and Wildlife Habitat.
D	SCI of ≥ 0.10 *or* STIR rating of ≤ 100	At least 2 unique practices or activities from any of the areas.
E		*Must meet minimum program eligibility requirements as defined in 7 CFR 1469.

PASTURE

Category	Criteria	
	Pasture condition score	Stewardship practices and activities (from list below) in place for at least two years
A	At least 45	At least 2 unique practices or activities from each area of Soil Quality, Water Quality, and 1 Wildlife Habitat.

PASTURE—Continued

Category	Criteria	
	Pasture condition score	Stewardship practices and activities (from list below) in place for at least two years
B	At least 40	At least 1 unique practice or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat, and one additional practice from any of the areas.
C	At least 35	At least 1 unique practice or activity from each area of Soil Quality, Water Quality and Wildlife Habitat.
D	At least 35	At least 2 unique practices or activities from any of the areas.
E		*Must meet minimum program eligibility requirements as defined in 7 CFR 1469.

RANGE

Category	Criteria	
	Rangeland health	Stewardship practices and activities (from list below) in place for at least two years
A	None to slight for all 3 attributes	Prescribed Grazing plus at least 1 unique practice or activity from each area of Soil Quality, Water Quality and Wildlife Habitat.
B	None to slight for 2 attributes and slight to moderate for 1 attribute.	Prescribed Grazing plus at least 1 unique practice or activity from any 2 of the following areas of Soil Quality, Water Quality and Wildlife Habitat.
C	None to slight for 1 attribute and slight to moderate for 2 attributes.	Prescribed Grazing plus at least 1 unique practice or activity from any 2 of the following areas of Soil Quality, Water Quality and Wildlife Habitat.
D	Slight to moderate or higher for 2 attributes and slight to moderate or moderate to extreme for 1 attribute.	Prescribed Grazing plus at least 1 unique practice or activity from each of the following areas of Soil Quality, Water Quality and Wildlife Habitat.
E		*Must meet minimum program eligibility requirements as defined in 7 CFR 1469.

2005 CSP Enrollment Categories—Criteria by Land Use and Category

Cropland Soil Quality—Stewardship Practice and Activity List for Soil Quality

- *Conservation crop rotation* expanded with increased amount of sod or perennial crops in rotation for a minimum of 2 years; or a high biomass crop every other year, or annual cover crop, or a combination of crops that match soil water storage with crop water use needs.
- *Residue management system* with no-till or strip tillage systems to maintain plant residues on the soil surface year-round.
- *Contour orchards and other fruit areas* with cultural operations for vineyards, or minor crops performed on the contour.
- *Cover crops* of grasses, legumes, forbs, or other herbaceous plants established for seasonal cover, or with chipping residue in orchards, vineyards, or minor crops systems.
- *Nutrient management* with soil test and/or plant tissue test on annual basis to meet crop needs.
- *Crop management* with use of certified crop consultants to monitor need for herbicide and pesticide applications.
- *Soil salinity management* on irrigated cropland with soil amendments such as polyacrylamide (PAM) or gypsum.
- *Contour buffer strips* with permanent, herbaceous vegetative cover established across the slope and alternated down the slope with parallel, wider cropped strips.
- *Filter strip* of herbaceous vegetation situated between cropland, grazing land, or forestland and environmentally sensitive areas.
- *Field borders* with a strip of permanent vegetation established at the edge or around the perimeter of a field.
- *Grassed waterway* that is shaped or graded to required dimensions and established with suitable vegetation.
- *Alley cropping* with trees or shrubs planted in single or multiple rows with agronomic, horticultural crops or forages produced between rows of woody plants.
- *Stripcropping* with row crops, forages, small grains, or fallow in alternating across a field.
- *Riparian forest buffer* of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.
- *Riparian herbaceous cover* consisting of grasses, grass-like plants and forbs.
- *Windbreak and shelterbelt establishment* of single or multiple rows of trees or shrubs.
- *Hedgerow planting* with the establishment of dense vegetation.
- *Herbaceous wind barriers* with vegetation established in rows or narrow strips across the prevailing wind direction.
- *Cross wind trap strips* with herbaceous cover resistant to wind erosion.
- *Pasture and hayland plantings* for establishing native or introduced forage species.
- *Forage harvest management* for improved ground cover, protection from soil erosion and to improve soil characteristics.

2005 CSP Enrollment Categories—Criteria by Land Use and Category

Cropland Water Quality—Stewardship Practice and Activity List for Water Quality

Cropland WQ—Permanent Vegetation Practices and Activities

- *Cover crops* of grasses, legumes, forbs, or other herbaceous plants established for seasonal cover.
- *Contour buffer strips* with permanent, herbaceous vegetative cover established across the slope and alternated down the slope with parallel, wider cropped strips.
- *Water control structures* to catch, manage and properly use water applications.
- *Critical area planting* that establishes permanent vegetation on sites with high erosion rates, and physical, chemical or biological conditions that prevent the

establishment of vegetation with normal practices.

• *Field borders* with a strip of permanent vegetation established at the edge or around the perimeter of a field.

• *Filter strip* with herbaceous vegetation between cropland, grazing land, or forestland and environmentally sensitive areas.

• *Hedgerow planting* of dense vegetation in a linear design.

• *Pasture and hayland planting* to provide increased sod or perennial crops in rotation for a minimum of 2 years.

• *Riparian forest buffer* of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

• *Riparian herbaceous cover* consisting of grasses, grass-like plants and forbs.

• *Grassed waterway* that is shaped or graded to required dimensions and established with suitable vegetation.

Cropland WQ—Water Management Practices and Activities

• *Sediment basins* to collect and store debris or sediment.

• *Soil salinity management* on irrigated cropland with soil amendments such as polyacrylamide (PAM) or gypsum.

• *Water and sediment control basins* to trap sediment and detain water.

• *Wetland enhancement* to increase function and values.

• *Wetland restoration and rehabilitation* of a drained or degraded wetland to restore natural condition.

• *Irrigation system with micro-irrigation* for distribution of water directly to the plant root zone.

• *Irrigation system with MESA, LIPC, LEPA* or similar high efficiency irrigation system to supply crop needs that matches water application to crops, soils and topography.

• *Irrigation water management* by determining and controlling the volume, frequency, and application rate of irrigation water, and

—Improved system efficiency by evaluations and adjustment;
—Use of data from on-farm weather station; and
—Use of tensiometers or other techniques to assess and improve irrigation water management.

• *Crop rotation and selection* to minimize the use of irrigation by planting alternative crops with reduced water needs.

• *Drainage water management* through seasonal on-farm water storage and retention.

• *Irrigation with a tailwater return system* which utilizes the collection, storage, and transportation of irrigation tailwater for reuse.

Cropland WQ—Pest Management Practices and Activities

• *Pest management* activities, including:

—Spot spraying activities and other control of noxious/invasive weeds.
—Minimize pesticide use by selecting plant varieties to minimize the application of pesticides.
—Use a risk assessment tool such as WINPST to select the least toxic pesticides and herbicides to minimize harmful environmental effects.
—Use local guidelines to set economic thresholds for pests to minimize use of pesticides and herbicides.
—Use beneficial insects.

Cropland WQ—Nutrient Management Practices and Activities

• *Nutrient management* activities, including:

—Precise nutrient application of such as—banding, side dressing, injection, fertigation.
—Split nitrogen application to meet crop needs.
—Test soil and/or plant tissue annually.
—Use yield monitoring data to determine nutrient needs.
—Waste utilization to control pathogen and organic runoff.
—Feed management and additives.

2005 CSP Enrollment Categories—Criteria by Land Use and Category

Cropland Wildlife Habitat—Stewardship Practice and Activity List for Wildlife Habitat (Activities to improve fish and wildlife habitat)

• *Conservation crop rotation* with increased amount of sod or perennial crops in rotation for a minimum of 2 years.

• *Cover crops* of grasses, legumes, forbs, or other herbaceous plants established for seasonal cover.

• *Critical area planting* that establishes permanent vegetation on sites with high erosion rates, and other conditions that prevent the establishment of vegetation with normal practices.

• *Pest management* by:

—Spot spraying activities and other control of noxious/invasive weeds.
—Minimize pesticide use by selecting plant varieties to minimize the application of pesticides.
—Use a risk assessment tool such as WINPST or others to select the least toxic pesticides and herbicides to minimize harmful environmental effects.
—Use of beneficial insects.

• *Pasture and hay plantings* by establishing native or introduced forage species.

• *Forage harvest management* with timely cutting and removal of forages from the field as hay, green-chop or ensilage, or by mowing crops from center of field outward

• *Wildlife habitat management* in approved management plan or Private Lands Agreement that meets the needs for food, cover or water for targeted species.

• *Wetland restoration and rehabilitation* of a drained or degraded wetland to restore wetland functions and values.

• *Wetland enhancement* to increase function and values.

• *Drainage water management* with control of water surface elevations and discharge from surface and subsurface drainage systems.

• *Shallow water development* to provide open water on fields and moist soil areas to facilitate waterfowl resting and feeding and provide habitat for reptiles, amphibians and other aquatic species.

• *Stream habitat management* activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

• *Wildlife habitat management* by winter flooding of cropland fields for species in need of conservation.

• *Windbreak and shelterbelt establishment* of single or multiple rows of trees or shrubs.

• *Hedgerow planting* of dense heterogeneous vegetation in a linear design.

• *Field borders* with permanent vegetation at the edge or around the perimeter of a field for wildlife.

• *Riparian forest buffer* of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

• *Riparian herbaceous cover* consisting of grasses, grass-like plants and forbs.

• *Drainage water management* through seasonal on-farm water storage and retention.

2005 CSP Enrollment Categories—Criteria by Land Use and Category

Grazing Lands: Stewardship Practice and Activity List for Plant Health and Soil Quality (Activities To Improve Soil Quality or the Health of the Plant Community)

• *Brush management* for removal, reduction or manipulation of non-herbaceous plants.

• *Pasture and hay plantings* by establishing permanent vegetative cover.

• *Range planting* to establish adapted perennial vegetation.

• *Prescribed burning* by applying controlled fire to a predetermined area.

• *Grassed waterway* that is shaped or graded to required dimensions and established with suitable vegetation.

• *Grazing land mechanical treatment* modifying physical soil and/or plant conditions.

• *Channel bank stabilization* by establishing and maintaining vegetation.

• *Soil salinity management* on non-irrigated grazing lands.

• *Prescribed grazing management* including:

—Bottomland or riparian area treated as a separate grazing treatment unit and alternative watering facilities in place.

—Grazing distribution facilitated by managing watering locations and rotating feeding and salting areas.

—Use of decision support tools in development of grazing and/or animal management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), etc.

—Participating in grass-banking or stockpiling.

—Application of monitoring plan for improved grazing management.

• *Riparian herbaceous cover improvements* with cover consisting of grasses, grass-like plants and forbs.

• *Nutrient management* with soil and/or plant tissue test every 3 years on pastures not receiving confinement wastes or annual tests where confinement wastes are applied.

• *Irrigation water management* properly determining and controlling the volume, frequency, and application rate of irrigation water in a planned, efficient manner.

• *Heavy use area protection* and stabilization by establishing vegetative cover, surfacing with suitable materials, and/or installing needed structures.

2005 CSP Enrollment Categories—Criteria by Land Use and Category

Grazing Lands: Stewardship Practice and Activity List for Water Quality

• *Prescribed grazing management* by use of decision support tools in development of grazing and/or animal management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), etc., or application of monitoring plan.

• *Brush management* for removal, reduction or manipulation of non-herbaceous plants.

• *Water well* constructed to access aquifers.

• *Watering facility* for providing animal access to water.

• *Critical area planting* that establishes permanent vegetation on sites with high erosion rates, and physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.

• *Fence* (sensitive area protection only) to control movement of animals and people.

• *Spring development* that provides water for a conservation need.

• *Pipeline* installed to convey water for livestock, wildlife, or recreation.

• *Nutrient* management by:

—Soil and/or plant tissue test every 3 years on pastures not receiving confinement wastes or annual tests where confinement wastes are applied.

—Direct injection of animal wastes.

—Split nitrogen applications to meet current crop needs.

• *Integrated pest management* to control weeds, brush, insects, or diseases.

• *Stream crossing* constructed to provide a travel way for people, livestock, equipment, or vehicles.

• *Stream habitat management* activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

• *Streambank and shoreline protection* treatments to stabilize and protect banks of streams, constructed channels, shorelines of lakes, reservoirs, or estuaries.

• *Water and sediment control basins* to trap sediment and detain water.

• *Livestock watering areas* have controlled access.

• *Riparian herbaceous cover improvements* with additions of grasses, grass-like plants and forbs.

• *Wetland enhancement* to increase function and values.

• *Wetland restoration and rehabilitation* of a drained or degraded wetland to restore natural condition.

• *Waste utilization* to control pathogen and organic runoff.

CSP Enrollment Categories—Criteria by Resource Concern

Grazing Lands: Stewardship Practice and Activity List for Wildlife Habitat (Activities To Improve Fish and Wildlife Habitat)

• *Channel bank stabilization* by establishing and maintaining vegetation.

• *Critical area planting* that establishes permanent vegetation on sites with high erosion rates, physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.

• *Heavy use area protection* and stabilization by establishing vegetative cover, surfacing with suitable materials, and/or installing needed structures.

• *Pasture and hay plantings* of native or introduced forage species.

• *Prescribed burning* by applying controlled fire to a predetermined area.

• *Riparian herbaceous cover improvements* with additions of grasses, grass-like plants and forbs.

• *Spring development* that provides water during critical times.

• *Stream habitat improvement and management* activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

• *Streambank and shoreline protection* treatments to stabilize and protect banks of streams, constructed channels, shorelines of lakes, reservoirs, or estuaries.

• *Water well* constructed to access aquifers.

• *Watering facility* for providing animal access to water.

• *Wetland enhancement* to increase function and values.

• *Wetland restoration and rehabilitation* of a drained or degraded wetland to restore functions and values.

• *Wildlife watering facility* that meets the needs of targeted species.

• *Wildlife habitat management by:*

—Application of an approved management plan or Private Lands Agreement that meets the needs for food, cover or water for targeted species.

—Enhance wildlife habitat linkages and corridors by creating a mosaic or pattern.

—Management that provides for shallow water and wetland wildlife habitat improvement.

• *Prescribed grazing management* that:

—Adds functional group pastures to improve pasture condition.

—Interseeding of desirable forages and legumes

—Timed grazing on a portion of paddocks to create habitat for targeted species.

—Increased plant diversity—forbs and legumes greater than 40%.

—Patch burn/graze to improve wildlife habitat diversity and cover.

• *Integrated pest management* activities for weeds, brush, insects, or diseases that include follow-up treatment.

• *Brush management* for removal, reduction or manipulation of non-herbaceous plants.

• *Range planting* to establishment of adapted perennial vegetation.

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BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent of Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request renewal of approval for annual information collection on supplemental food security questions in the Current Population Survey, commencing with the December 2005 survey. These data will be used: to monitor household level food security and food insecurity in the United States; to assess food security and changes in food security for population subgroups; to assess the need for, and performance of, domestic food assistance programs; to improve the measurement of food security; and to provide information to aid in public policy decision making.

DATES: Comments on this notice must be received by May 30, 2005 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Mark Nord, Food Assistance Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW., Room N–2180, Washington, DC 20036–5831. Tel. 202–694–5433. Submit electronic comments to *marknord@ers.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Annual Food Security Supplement to the Current Population Survey, beginning in December 2005.

Type of Request: Approval to collect information on household food insecurity.

OMB Number: 0536–0043.

Expiration Data: N/A

Abstract: The U.S. Census Bureau will supplement the December Current Population Survey, beginning in 2005, with questions regarding household food shopping, food sufficiency, coping mechanisms and food scarcity, and concern about food sufficiency. A similar supplement has been appended to the CPS annually since 1995. The last collection was in December 2004. Copies of the information to be collected can be obtained from the address in the preamble.

ERS is responsible for conducting studies and evaluations of the Nation's food assistance programs that are administered by the Food and Nutrition Service (FNS), U.S. Department of Agriculture. The Department spends about $46 billion each year to ensure access to nutritious, healthful diets for all Americans. The Food and Nutrition Service administers the 15 food assistance programs of the USDA including Food Stamps, Child Nutrition, and WIC programs. These programs, which serve 1 in 5 Americans, represent our Nation's commitment to the principle that no one in our country should lack the food needed for an active healthy life. They provide a safety net to people in need. The programs' goals are to provide needy persons with access to a more nutritious diet, to improve the eating habits of the Nation's children, and to help America's farmers by providing an outlet for the distribution of food purchased under farmer assistance authorities.

These data will be used to monitor the prevalence of food security and the prevalence and severity of food insecurity among the Nation's households. The prevalence of these conditions as well as year-to-year trends in their prevalence will be estimated at the national level and for population subgroups. The data will also be used to monitor the amounts that households spend for food and their use of community food pantries and emergency kitchens. These statistics along with research based on the data will be used to identify the causes and consequences of food insecurity, and to assess the need for, and performance of, domestic food assistance programs. The data will also be used to improve the measurement of food security and to develop measures of additional aspects and dimensions of food security. This consistent measurement of the extent and severity of food insecurity will aid in policy decision making. The supplemental survey instrument was developed in conjunction with food security experts nationwide as well as survey method experts within the Census Bureau. This supplemental information will be collected by both personal visit and telephone interviews in conjunction with the regular monthly CPS interviewing. All interviews, whether by personal visit or by telephone, are conducted using computers.

Estimate of Burden: Public reporting burden for this data collection is estimated to average 7.6 minutes for each household that responds to the laborforce portion of the CPS.

Respondents: Individuals or households.

Estimated Number of Respondents: 56,200.

Estimated Total Annual Burden on Respondents: 7,155 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information 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. Comments should be sent to the address in the preamble. 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.

Dated: March 7, 2005.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 05–5896 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest, LaCroix and Kawishiwi Ranger Districts, Minnesota Echo Trail Area Forest Management Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement (EIS) for the Echo Trail Area Forest Management Project. The Record of Decision will disclose how the Forest Service will manage vegetation to meet landscape ecosystem objectives in the Project Area. The project Area encompasses about 126,000 acres of National Forest System land. The Proposed Action would provide approximately 80 million board feet of timber to local and regional timber

markets; harvest approximately 16,006 acres of mature and overmature stands in the Jack Pine/Black Spruce, Dry-mesic Red and White Pine, and Lowland Conifer landscape ecosystems; thin about 838 acres of pine; do timber stand improvement activities on about 287 acres and diversity planting on about 981 acres; and provide road access across National Forest System land to State and county forested lands. The transportation system would also be analyzed to provide roads for forest resource management. A range of alternatives, including a no-action alternative, will be developed to respond to significant issues. The proposed project is located on the LaCroix and Kawishiwi Ranger Districts, Cook and Ely, Minnesota, Superior National Forest. In addition , the Proposed Action may create temporary openings greater than 1,000 acres.

DATES: Comments concerning the scope of this project must be received by May 9, 2005. The draft environmental impact statement is expected October 2005. The final environmental impact statement is expected March 2006.

ADDRESSES: Send written comments to Nancy S. Larson, LaCroix District Ranger, Echo Trail Area Forest Management Project EIS, LaCroix Ranger District, 320 North Highway 53, Cook, MN 55723. For further information, mail correspondence to Carol Booth, Project Leader, at the address above. Send electronic comments to *comments-eastern-superior-la-croix@fs.fed.us. See* **SUPPLEMENTARY INFORMATION** section below for how to send electronic comments.

FOR FURTHER INFORMATION CONTACT: Nancy S. Larson, LaCroix District Ranger, or Carol Booth, Echo Trail Area Project Leader at **ADDRESSES** above or telephone: (218) 666–0020.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Echo Trail Area Forest Management Project is to move the area towards the vegetation and landscape ecosystem desired conditions described in the 2004 Superior National Forest Plan.

Proposed Action

The proposed action would include clearcut harvesting with reserve trees about 16,006 acres and thinning about 838 acres, resulting in an estimated 80 million board feet available for timber sales. In addition, about 34 miles of road would be added to the transportation system and about 51 miles of road would be decommissioned. Special use road permits for about 12 miles of roads would be issued to the State and county.

Responsible Officials

Nancy S. Larson, LaCroix District Ranger, 320 North Highway 53, Cook, MN 55723 and Mark E. Van Every, Kawishiwi District Ranger, 118 South 4th Ave. East, Ely, MN 55731.

Nature of Decision To Be Made

An environmental analysis for this project area will evaluate site-specific issues, consider alternatives, and analyze the potential effects of the proposed action and alternatives. The scope of the project is limited to decisions concerning activities within the Echo Trail Project Area that meet the purpose and need and desired conditions. An environmental impact statement will provide the deciding officials (Nancy S. Larson, LaCroix District Ranger and Mark Van Every, Kawishiwi District Ranger) with the information needed to make the following decisions for the Echo Trail Area Forest Management Project:

1. What actions would be used to address the purpose and need.
2. Where and when those actions would take place.
3. What mitigation measure and monitoring requirements would be required.

Scoping Process

Public participation will be an integral component of the analysis process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service is seeking information, comments, and assistance from Federal agencies, State agencies, local agencies, individuals, and organizations that may be interested or affected by the proposed activities. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth, and (3) elimination of insignificant issues, or those which have been covered by a previous environmental review. Based on the results of scoping and the resource capabilities within the project area, alternatives, including a no-action alternative, will be developed for the draft environmental impact statement.

Permits or Licenses Required

The proposed action may create temporary openings greater than 1,000 acres. A 60-day public notice and review by the Regional Forester would be needed for such action.

Easement or permission to cross non-federal property may be needed to access some treatment units to implement Forest Service activities.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Written comments will be solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments must be received by May 9, 2005. Include name, address, and title of the project with your comments.

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, that 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 objects that could have been 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 of 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 chapter 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 in 40 CFR 1503.3.

Comments received, including 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. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission, from the public record, by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. If the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

In making the decision, the responsible officials will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies. The responsible officials will state the rationale for the chosen alternative in the Record of Decision.

Dated: March 21, 2005.

Nancy S. Larson,

LaCroix District Ranger.

Dated: March 21, 2005.

Mark E. Van Every,

Kawishiwi District Ranger.

[FR Doc. 05–5908 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Counties Payments Committee will meet in Sparks, Nevada, April 15, 2005. The purpose of the meeting is to discuss Section 320 of the Interior and Related Agencies Appropriations Act of 2001.

DATES: The meeting will be held on April 15, 2005. The meeting will consist of a session from 9 a.m. until 12 p.m., which will be open to public participation, followed by a business session, open only to public attendance.

ADDRESSES: The meeting will be held at the John Ascuaga's Nugget Hotel, Rose B Meeting Room, 2nd floor, 1100 Nugget Avenue, Sparks, Nevada 89431.

Those who cannot be present may submit written responses to the questions, listed in the **SUPPLEMENTARY INFORMATION** section of this notice, to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, PO Box 34718, Washington, DC 20043–4713, or electronically to the Committee's Web site at *http://countypayments.gov/comments.html.* Comments must be received by May 1, 2005, to be assured of consideration. Comments received after that date will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, at (202) 208–6574 or via e-mail at *rphillips01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Section 320 of the Interior and Related Agencies Appropriations Act of 2001 created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. The Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands, which are Federal responsibilities; and monitor payments and implementation of The Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). In order to develop its recommendations to Congress, the Committee would like to hear from both elected officials and the general public. At the April 15 meeting in Sparks, Nevada, the Committee asks that respondents provide information that is responsive to the following questions:

1. Schools

Identify specific examples of expenditures for education resulting directly from payments received from Public Law 106–393 that would not have been possible without the funding from this Act. Specify whether these, or other education services, would be discontinued or reduced when the current Law expires in 2006 and, if other funding sources would be available to replace the funds currently provided by Public Law 106–393.

2. Roads

Identify examples of expenditures on roads from payments from Pub. L. 106–393 that would not have been possible without the funding from this Act. Specify whether these, or other transportation services, would be discontinued or reduced when the current Law expires in 2006, or if other funding sources would be available to replace them.

3. Resource Advisory Committees

Pursuant to the requirements of Pub. L. 106–393, a county, or similar local governing body, that receives $100,000 or more, must set aside between 15 and 20 percent of the total payment for Title II, Title III, or a combination of the two titles.

If your county received at least $100,000, please describe the reasons why your local governing body decided not to set aside money for Title II, public lands projects, and establish a resource advisory committee. Please describe any conditions or circumstances that would have caused your local governing body to set aside money in Title II, and establish a resource advisory committee.

4. Role of Resource Advisory Committees

The projects of resource advisory committees are determined by funds set aside by counties and agreed to by the members of the committee as described in their charter.

Based on the experience you have gained in working with resource advisory committees, do you believe the role of these committees could be expanded beyond their current responsibilities to address other management activities on public lands? If so, please provide examples. What advantages would be gained from such expansion?

5. Title III

There are currently six categories for which expenditures of Title III funds are permitted. These categories are: Search, rescue, and emergency services on Federal lands; community service work camps for Federal lands; easement purchases; forest related educational opportunities; fire prevention and county planning; and community forestry. Are there other categories you would like to see added to the list that would permit expenditures of these funds? Please provide your reasons.

6. Implementation of the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148)

Please provide specific examples where funds from Title II, Title III, or a combination of both, have been used to accomplish the purposes of the Healthy Forests Restoration Act of 2003.

Dated: March 21, 2005.

Elizabeth Estill,

Deputy Chief, Programs, Legislation and Communication.

[FR Doc. 05–5930 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: April 24, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On January 7, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 1413) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Base Supply Center & Individual Equipment Element
(The sale of Furniture and Furniture related items at this BSC is prohibited.)
Hill Air Force Base, Utah.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Contracting Activity: Hill Air Force Base, Utah.

Deletions

On January 28, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 F.R. 4090) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Commissary Shelf Stocking & Custodial,
Fort Bragg and Malonee Village, Fayetteville, North Carolina.
NPA: None Currently Authorized.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Food Service.
Pueblo Chemical Depot, Pueblo, Colorado.
NPA: Pueblo Diversified Industries, Inc., Pueblo, Colorado.
Contracting Activity: U.S. Army, Rocky Mountain Arsenal, Commerce City, Colorado.
Service Type/Location: Janitorial/Custodial.
U.S. Federal Building and Courthouse, Fresno, California.
NPA: None currently authorized.
Contracting Activity: GSA, Public Buildings Service.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 05–5960 Filed 3–24–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

DATES: Comments must be received on or before: April 24, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services, Transportation Security Administration, Pittsburgh International Airport, Pittsburgh, Pennsylvania.
NPA: ARC—Allegheny, Pittsburgh, Pennsylvania.
Contracting Activity: GSA, PBS—Pittsburgh, Region 3, Pittsburgh, Pennsylvania.

Service Type/Location: Custodial Services, Williams Gateway Airport, 6416 Sossamon Road, Mesa, Arizona.
NPA: Goodwill Community Services, Inc., Phoenix, Arizona.
Contracting Activity: Department of Homeland Security, Laguna Niguel, California.

Service Type/Location: Dormitory Management Services, Department of Homeland Security, Federal Law Enforcement Training Center, Artesia Facility, Artesia, New Mexico.
NPA: Adelante Development Center, Inc., Albuquerque, New Mexico.
Contracting Activity: Department of Homeland Security (FLETC), Artesia, New Mexico.

Service Type/Location: Grounds Maintenance, Fort Worden Cemetery, Fort Worden State Park, Port Townsend, Washington.
NPA: Skookum Educational Programs, Port Townsend, Washington.
Contracting Activity: Army-Fort Lewis, Fort Lewis, Washington.

Service Type/Location: Janitorial/Custodial, U.S. Customs Service, 700 Maritime Street, Oakland, California.
NPA: The Independent Way, Oakland, California.
Contracting Activity: Department of Homeland Security, Laguna Niguel, California.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, New Orleans, New Orleans, Louisiana.
NPA: Goodworks, Inc., New Orleans, Louisiana.
Contracting Activity: Department of the Army.

Service Type/Location: Mailroom Operation, New Orleans Strategic Petroleum Reserve (SPR) Site, New Orleans, Louisiana.
NPA: Goodworks, Inc., New Orleans, Louisiana.
Contracting Activity: DnyMcDermott Petroleum Operation Company.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 05–5961 Filed 3–24–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0089.

Type of Request: Regular submission.

Burden Hours: 12.

Number of Respondents: 12.

Average Hours Per Response: 1 hour.

Needs and Uses: Section 204 of the Magnuson-Stevens Fishery Conservation and Management Act provides for the issuance of fishing permits to foreign vessels. The persons wanting permits must submit application material needed by NOAA to evaluate and act on the request.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 21, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–5935 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Customer Surveys.

Form Number(s): None.

OMB Approval Number: 0648–0342.
Type of Request: Regular submission.
Burden Hours: 1,337.
Number of Respondents: 18,573.
Average Hours Per Response: 4 minutes.
Needs and Uses: This is a request for a generic clearance for voluntary customer surveys to be conducted by NOAA program offices to determine whether their customers are satisfied with products and/or services being received and whether they have suggestions for improving those products and services. NOAA is not planning a NOAA-wide survey. The request is for approval of generic lists of questions which individual program offices would select from and adapt to meet their specific needs, and for the previously approved list of surveys using these questions. The proposed surveys are developed and sent to OMB for fast-track review to ensure that they are consistent with the generic clearance and well-planned.
Affected Public: Business or other for-profit organizations; Individuals or households; Not-for-profit institutions; Farms; Federal government; State, local or tribal government.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.
Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).
Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: March 21, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–5936 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Southwest Region Vessel Identification Requirements.
Form Number(s): None.
OMB Approval Number: 0648–0361.
Type of Request: Regular submission.
Burden Hours: 1,142.
Number of Respondents: 1,481.
Average Hours Per Response: 46 minutes.
Needs and Uses: The vessels in certain federally-regulated fisheries off the U.S. west coast and western Pacific region are required to display the vessel's official number in three locations. Purse seine tuna vessels in the South Pacific are required to display their international radio call sign in three locations and on any helicopter or skiff. The requirement is necessary to aid enforcement of fishery regulations.
Affected Public: Business or other for-profit organizations; Individuals or households.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.
Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).
Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 21, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–5937 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fishery.
Form Number(s): None.
OMB Approval Number: 0648–0272.
Type of Request: Regular submission.
Burden Hours: 15,329.
Number of Respondents: 2,000
Average Hours Per Response: 25 minutes.
Needs and Uses: The National Marine Fisheries Service seeks to renew a collection of information for the continued management of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska as well as the Western Alaska Community Development Quota Program (CDQ) halibut fishery. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen and Gulf of Alaska Non-profit Organizations holding Quota Shares (QS). The CDQ halibut program allocates annual total catch limits for the halibut fishery among individual CDQ fishermen. Fishermen are assigned QS for the fisheries, and then annually receive an IFQ and/or CDQ. Applications and reporting are required to manage and track the program.
Affected Public: Business or other for-profit organizations; Individuals or households.
Frequency: Annually and on occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.
Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).
Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 21, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–5938 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Albacore Logbook.

Form Number(s): LS and FP.

OMB Approval Number: 0648–0223.

Type of Request: Regular submission.

Burden Hours: 4,000.

Number of Respondents: 1,000.

Average Hours Per Response: 1 hour.

Needs and Uses: The fishermen participating in the Pacific albacore tuna fishery are asked to voluntarily complete and submit logbooks documenting their catch and effort on fishing trips. Anyone possessing High Seas Fishing Compliance Act permits are required to submit such logbooks. The information obtained is used by the agency to assess the status of albacore stocks and to monitor the fishery.

Affected Public: Business or other for-profit organizations.

Frequency: By trip, averaging four times per year.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: March 21, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–5939 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Asian Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the Asian Population. The Census Bureau will consider nominations received in response to this notice as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by April 15, 2005.

ADDRESSES: Please submit nominations to Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 3627, Federal Building 3, 4700 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–457–8608, or e-mail to *edwina.martha.jaramillo@census.gov.*

FOR FURTHER INFORMATION CONTACT: Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 3627, Federal Building 3, 4700 Silver Hill Road, Washington, DC 20233, telephone (301) 763–4047.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 2000. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties:

1. The Committee provides an organized and continuing channel of communication between Asian communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Asian population, and on ways data can be disseminated for maximum usefulness to the Asian population.

2. The Committee draws upon prior decennial census activities, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Census, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership:

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, and technical expertise, community involvement and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the Federal government can serve as a member of the Committee, nor can a member serve on existing census consultation or advisory groups. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership.

Miscellaneous:

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information:

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of Asian communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Asian population and obtain complete and accurate data on these populations. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (resumé or

curriculum vitae) must be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: March 21, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 05–5948 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Census

Request for Nominations of Members to Serve on the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to serve on the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Populations. The Census Bureau will consider nominations received in response to this notice as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by April 15, 2005.

ADDRESSES: Please submit nominations to Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 3627, Federal Building 3, 4700 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–457–8608 or e-mail to *edwina.martha.jaramillo@census.gov.*

FOR FURTHER INFORMATION CONTACT: Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 3627, Federal Building 3, 4700 Silver Hill Road, Washington, DC 20233, telephone (301) 763–4047.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 2000. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties:

1. The Committee provides an organized and continuing channel of communication between Native Hawaiian and Other Pacific Islander communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Native Hawaiian and Other Pacific Islander populations, and on ways data can be disseminated for maximum usefulness to the Native Hawaiian and Other Pacific Islander populations.

2. The Committee draws upon prior decennial census activities, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Census, the American Community Survey, and related decennial programs.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership:

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, and technical expertise, community involvement and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee, nor can a member serve on existing census consultation or advisory groups. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership.

Miscellaneous:

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information:

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of Native Hawaiian and Other Pacific Islander communities. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Native Hawaiian and Other Pacific Islander populations and obtain complete and accurate data on these populations. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (resumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: March 21, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 05–5949 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee will address issues regarding Census Bureau programs and activities related to their areas of expertise. Members will address policy, research, and technical issues related to the 2010 Reengineered Census of

Population and Housing, including the American Community Survey. The Committee also will discuss several economic initiatives, as well as issues pertaining to marketing services and measurement of local labor market activity. Last-minute changes to the agenda are possible, which could prevent giving advance notice of schedule adjustments.

DATES: April 21–22, 2005. On April 21, the meeting will begin at approximately 9 a.m. and adjourn at approximately 5:15 p.m. On April 22, the meeting will begin at approximately 9 a.m. and adjourn at approximately 12:15 p.m.

ADDRESSES: The meetings will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233. Her telephone number is 301–763–2070, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Census Advisory Committee of Professional Associations is composed of 36 members, appointed by the Presidents of the American Economic Association, the American Statistical Association, and the Population Association of America, and the chairperson of the Board of the American Marketing Association. The Committee addresses issues regarding Census Bureau programs and activities related to their respective areas of expertise. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section10(a)(b)).

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing, at least three days before the meeting, to the Committee Liaison Officer named above. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer.

Dated: March 21, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 05–5950 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for an Export Trade Certificate of Review

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 24, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at: *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Chris Rasmussen, Export Trading Company Affairs, Industry Analysis, Room 1104, 14th & Constitution Ave., NW., Washington, DC 20230; phone: (202) 482–5131, and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III of the Export Trading Company Act of 1982 (Pub. L. No. 97–290, 96 Stat. 1233–1247), requires the Department of Commerce to establish a program to evaluate applications for Export Trade Certificates of Review, and with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce, with Justice concurrence, issue regulations governing the evaluation and issuance of certificates before Commerce can accept applications for certification. The collection of information is necessary for the antitrust analysis which is a prerequisite to issuance of a certificate. Without the information there would be no basis upon which a certificate could be issued. In the Department of Commerce, this economic and legal analysis will be performed by the Office of Export Trading Company Affairs and the Office of the General Counsel. The Department of Justice analysis will be conducted by the Antitrust Division. The purpose of such analysis is to make a determination as to whether or not to approve an application and issue an Export Trade Certificate of Review. If this information is not collected, the antitrust analysis cannot be performed and without that analysis no certificate can be issued. A certificate provides its holder and members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors.

II. Method of Collection

Form ITA–4093P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0125.

Form Number: ITA–4093P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit; Not-for-profit institutions and State, local or Tribal Government.

Estimated Number of Respondents: 30.

Estimated Time Per Response: 32 hours.

Estimated Total Annual Burden Hours: 960.

Estimated Total Annual Costs: The estimated annual cost for this collection is $344,400 ($260,000 government and $134,400 respondents).

IV. Request for Comments

Comments are invited (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 22, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–5940 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Notice of Extension of Time Limit for the Preliminary Results of the 2003–2004 Antidumping Duty Administrative Review: Persulfates From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 25, 2005.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti at (202) 482–7425 or Erol Yesin at (202) 482–4037, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2004, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on persulfates from the People's Republic of China, covering the period July 1, 2003, through June 30, 2004 (69 FR 56745). The preliminary results for this review are currently due no later than April 2, 2005.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

We have determined that it is not practicable to complete the preliminary results of this review within the time limit mandated by the Act due to a complex issue regarding affiliation, the resolution of which will determine the sales subject to review. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for issuing the preliminary results of review from April 2, 2005, until not later than August 1, 2005, which is the next business day after 365 days from the last day of the anniversary month. The final results continue to be due 120 days after publication of the preliminary results.

Dated: March 18, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1306 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Dynamic Random Access Memory Semiconductors From the Republic of Korea: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES:EFFECTIVE DATE: March 25, 2005.

FOR FURTHER INFORMATION CONTACT; Yasmin Bordas at (202) 482–3813; AD/CVD Operations, Office 1; Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On September 22, 2004, the Department published a notice of initiation of administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea, covering the period April 7, 2003, through December 31, 204. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, (69 FR 56745). On September 27, 2004, the petitioners alleged new subsidies. On November 30, 2004, the Department initiated an investigation of the alleged new subsidies. The preliminary results for this review are currently due no later than May 3, 2005.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We are currently analyzing information provided by the respondent in this review. This administrative review is extraordinarily complicated due to the complexity of the countervailable subsidy practices found in the investigation and the new subsidy allegations. Because the Department requires additional time to review, analyze, and possibly verify the information, and to issue supplemental questionnaires, if necessary, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by May 3, 2004). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than August 31, 2005, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 21, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–5956 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–D5–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–408–046]

Sugar From the European Community; Preliminary Results of Full Sunset Review of the Countervailing Duty Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty finding on sugar from the European Community

(''the Community'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Initiation of Five-Year (''Sunset'') Review,* 69 FR 53408 (September 1, 2004). On the basis of a notice of intent to participate filed on behalf of the domestic interested parties and adequate substantive comments filed on behalf of the domestic interested parties and the Community, the Department is conducting a full sunset review of the countervailing duty finding on sugar from the Community. As a result of this sunset review, the Department preliminarily finds that revocation of the countervailing duty finding would likely lead to continuation or recurrence of countervailable subsidies. The net countervailabe subsidy rate and the nature of the subsidy are identified in the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: March 25, 2005.

FOR FURTHER INFORMATION: Martha V. Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Scope

Imports covered by this countervailing duty finding are shipments of sugar from the European Community. During the review period, such merchandise was classifiable under item numbers 155.2025, 155.2045, 155.3000 and 183.05 of the Tariff Schedules of the United States Annotated (''TSUSA''). This merchandise is currently classifiable under item numbers 1701.11.05, 1701.11.10, 1701.11.20, 1701.11.50, 1701.12.05, 1701.12.10, 1701.12.50, 1701.91.05, 1701.91.10, 1701.90.30, 1701.99.05, 1701.99.1000, 1701.99.1090, 1701.99.5000, 1701.99.5090, 1702.90.05, 1702.90.10, 1702.90.20, 2106.90.42, 2106.90.44, 2106.90.46 of the Harmonized Tariff Schedule (''HTS''). Specialty sugars are exempt from the scope of this finding. On December 7, 1987, two interested parties, the United States Beet Sugar Association and the United States Cane Sugar Refiners' Association, requested a scope review of blends of sugar and dextrose, a corn-derived sweetner, containing at least 65 percent sugar. The merchandise is currently imported under the HTS item number 1701.99.00. On June 21, 1990, the Department issued a final scope clarification memorandum, which determined that such blends are within the scope of the finding, and that imports of such blends from the Community are subject to the corresponding countervailing duty.

Background

The Department published the notice of initiation of the second sunset review of the countervailing duty finding on sugar from the Community pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 53408 (September 1, 2004). The Department received the Notice of Intent to Participate from the United States Beet Sugar Association, American Sugar Refiners' Association, American Sugar Cane League, Sugar Cane Growers Cooperative of Florida, Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Hawaii Sugar Farmers, and the American Sugarbeet Growers Association, (collectively ''domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations (''Sunset Regulations''). The domestic interested parties claimed interested party status under section 771(9)(E) of the Act, as trade associations, the majority of whose members produce the domestic like product in the United States. We received substantive responses from domestic interested parties and the European Union Delegation of the European Commission (the ''Community'') within the deadline specified in 19 CFR 351.218(d)(3)(i).[1] As a result, pursuant to section 751(c)(5) of the Act and 19 CFR 351.218(e)(2)(i), the Department is conducting a full sunset review of this finding.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated March 21, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailing subsidy likely to prevail if the finding were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

[1] The European Commission is the authority responsible for administrating the sugar export restitution scheme. The European Commission has in the past participated in this proceeding.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*, under the heading ''March 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department preliminarily finds that revocation of the countervailing duty finding on sugar from the Community would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely to prevail if the finding were revoked is 21.62 cents per pound. Interested parties may submit case briefs no later than May 9, 2005, in accordance with 19 CFR 351.309 (c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310 (c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than May 14, 2005, in accordance with 19 CFR 351.309 (d). Any hearing, if requested, will be held on May 16, 2005. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than July 27, 2005.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1307 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032105C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the Mount

Desert Oceanarium (MDO), Southwest Harbor, ME, contains all of the required information and warrants further consideration. The EFP would allow one fishing vessel to fish for, retain, and land small numbers of regulated fish species, and several unmanaged fish and invertebrate species, for the purpose of public display. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Fishery Management Plans (FMPs) for these species. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Written comments must be received on or before April 11, 2005.

ADDRESSES: Written comments should be sent to: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MDO Specimen Collection.'' Comments may also be sent via fax to: 978–281–9135. Or, comments may be submitted via e-mail to: *da5–57@noaa.gov*. Include in the subject line of the e-mail ''Comments on MDO Specimen Collection.''

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Management Specialist, 978–281–9104.

SUPPLEMENTARY INFORMATION: The MDO submitted an application for an EFP on February 28, 2005, to collect several species of fish and invertebrates for public display. The target species would include American plaice (dab), winter flounder (blackback), yellowtail flounder, witch flounder (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea raven, Atlantic cod, lumpfish, Atlantic wolffish, spiny dogfish, little skate, barndoor skate, and various species of the phyla Arthropoda (excluding lobsters) and Echinodermata.

One chartered fishing vessel would use a shrimp otter trawl with 2–inch (5.08–cm) mesh to collect marine fish and invertebrates for a maximum of four days — two days during the period May 16–26, 2005, and two days during the period June 23–30, 2005. The specimens would be cared for in chilled and aerated seawater while on board the fishing vessel and would be transferred live to tanks the day they are caught. The fish would be brought to shore, maintained in tanks for public display for a period of time not to exceed five months, and would be returned to the sea in October 2005.

Collection would be made within the Small Mesh Northern Shrimp Fishery Exemption Area (Area), specifically within an area off the coast of Maine. Because the shrimp fishery will be closed at the time of the proposed collection, and this area lies within the Gulf of Maine Regulated Mesh Area, an exemption from the Northeast (NE) multispecies minimum mesh requirements of 6–inch (15.24–cm) diamond/6.5–inch (16.51–cm) square mesh at 50 CFR 648.80(a)(3) would be required.

The applicant would retain a maximum of six individuals per species, juveniles and adults combined, with the exception of Atlantic halibut. In addition to an exemption from the NE multispecies minium mesh requirements, the applicant would only be permitted to retain a total of one Atlantic halibut with a minimum length of 36 inches (91.44 cm). The applicant has requested the following exemptions from the NE Multispecies and Monkfish Fishery Management Plans: effort control program requirements at §§ 648.82(a) and 648.92(a); minimum fish sizes at §§ 648.83(a)(1) and 648.93(a)(1); and monkfish possession restrictions at § 648.94(b)(6). The EFP would also exempt the vessels from the possession and landing restrictions for the NE skate complex fishery at § 648.322(c).

Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 21, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–1297 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121603A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits; Correction

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

ACTION: Notice; correction.

SUMMARY: On September 27, 2004, NMFS announced that the Assistant Regional Administrator, Northeast Region, NOAA Fisheries (Assistant Regional Administrator) was proposing to issue Exempted Fishing Permits (EFPs) in response to an application submitted by the University of Rhode Island, Department of Fisheries, Animal and Veterinary Science (URI). These EFPs would allow three commercial fishing vessels to conduct a bycatch reduction study in the directed haddock bottom trawl fishery, using side-by-side tows to compare the control net with one experimental large-mesh net. The **Federal Register** notification announcing these EFPs had an incorrect end date of November 2005. This notice is intended to inform the public that the corrected end date is December 2005.

DATES: Written comments on this action must be received on or before April 11, 2005.

ADDRESSES: Comments on this notice may be submitted by e-mail to: *DA640@noaa.gov*. Written comments may also be sent to: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Bycatch EFP Proposal.'' Or, comments may be sent via fax to: 978–281–9135.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone: 978–281–9341, fax: 978–281–9135, e-mail: *heather.sagar@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 2004 (69 FR 57676), NMFS published notification in the **Federal Register** announcing the receipt of an application for an EFP to conduct a study to determine if an experimental trawl gear would achieve a reduction in cod bycatch significant enough to warrant consideration as a Special Access Program (SAP) under provisions in Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). The **Federal Register** notice indicated the end date for the study would be November 2005. The 15-day comment period on the proposed EFP closed on October 12, 2004, and NMFS recently issued EFPs to the applicant that indicated that the study would be concluded on November 30, 2005. Upon receipt of the EFPs, the applicant informed NMFS that an incorrect end date was cited in the EFP and the **Federal Register** notice. This notification corrects the end date to read December 2005.

An Environmental Assessment (EA) was originally prepared for the proposed study that analyzed the impacts of the proposed experimental fishery on the human environment. The EA analyzed the impacts of the proposed experimental fishery on the human environment including the month of December. The EA concluded that the activities proposed to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The EA also concluded that the experimental fishery would not be detrimental to essential fish habitat, marine mammals, or protected species. The ''Finding of No Significant Impact'' contained in the EA was signed by the Assistant Administrator for Fisheries on March 8, 2005.

Through this notice, NMFS informs the public that the end date contained in the September 27, 2004, **Federal Register** notification (69 FR 57676) contained an error. The document should have identified the end date as December 2005. NMFS also informs the public that NMFS intends to re-issue EFPs containing the correct end date. However, because the original **Federal Register** document contained the incorrect end date that may have caused confusion, NMFS is inviting comments on the revision to the EFPs. Should NMFS receive substantive comments on EFPs, NMFS may reconsider whether issuance of, modification to, or rescission of the EFPs would be appropriate.

Therefore, on page 57676, column 3, last full paragraph, the end date provided in the sixth line remove ''November 2005'' and in its place insert ''December 2005''.

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

Dated: March 21, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–1300 Filed 3–24–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Combined In-Plane Shear and Multi-Axial Tension or Compression Testing Apparatus

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,860,156 B1 entitled ''Combined In-Plane Shear and Multi-Axial Tension or Compression Testing Apparatus'' issued March 1, 2005. This patent has been assigned to the United States Government as represented by the Secretary of the Navy.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, phone: (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–5926 Filed 3–24–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College Advisory Committee

AGENCY: Department of the Army, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Date of Meeting: April 18–20, 2005.

Place of Meeting: Bell Hall, Room 113, Fort Leavenworth, KS 66027–1352.

Time of Meeting: 3 p.m.–5 p.m. (April 18, 2005); 7:30 a.m.–5 p.m. (April 19, 2005); and 7:30 a.m.–2 p.m. (April 20, 2005).

Proposed Agenda: Review of CGSC educational program and Executive Session and Report to Commandant (10 a.m.–12 p.m., April 20, 2005).

FOR FURTHER INFORMATION CONTACT: Dr. Robert F. Baumann, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 119, Fort Leavenworth, KS 66027–1352; or phone (913) 684–2742.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Robert F. Baumann,

Executive Secretary, Liaison Officer.

[FR Doc. 05–5924 Filed 3–24–05; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license within the geographic area of the United States of America and its territories and possessions to U.S. Provisional Patent S.N. 60/533,375, filed April 13, 2004 entitled ''Marburg Virus-Like Particles as a Vaccine for Prevention of Lethal Marburg Virus Disease,'' U.S. Patent application 10/289,839, filed November 7, 2002 entitled ''Generation of Virus-like Particles and Demonstration of Lipid Rafts as Sites of Filovirus Entry and Budding,'' and U.S. Patent application 10/066,506, filed January 31, 2002 entitled, ''Chimeric Filovirus Glycoprotein,'' for the specific claims and use related to the virus-like particle technology described therein, to be limited to the field of use of developing and commercializing prophylactic (preventative) vaccines and immunotherapties (active and passive) against the Ebola and Marburg filoviruses, individually or jointly to Virionics Corporation with its principal place of business at 19108 Barksdale Court, Germantown, MD 20874–1526.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–5922 Filed 3–24–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

NAF Contracting Regulation, AR 215—4

AGENCY: Department of the Army, DOD.

ACTION: Notice; final policy.

SUMMARY: This publication was last published October 10, 1990. It has been updated and revised to include best value acquisition practices, acquisition streamlining, participation in the government/nonappropriated fund (NAF) purchase card program, implementation of a NAF automated procurement system, and reassignment of signature authority in keeping with the Army's recent restructuring that resulted in the establishment of the new Installation Management Agency (IMA).

The public was not and will not be invited to comment on AR 215–4, NAF Contracting Regulation. Although the policy contained in this regulation affects the public as defined in Title 44, this regulation will not be codified. This notice is being published for the purpose of notifying the public as to how Nonapproporiated Fund Contracting activities will conduct its business.

EFFECTIVE DATE: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Maary Keeney, Chief, Policy Division, Nonappropriated Fund (NAF) Contracting Directorate, U.S. Army Community and Family Support Center (USACFSC), (703) 681–5245.

SUPPLEMENTARY INFORMATION: This publication applies to U.S. Army NAF contracting activities. It does not apply to the Army and Air Force Exchange Service (AAFES), the U.S. Army Reserve (USAR), the Army National Guard (ARNG), and the Chaplain's Fund, Plan Trust, and the NAF Banking and Investment Fund (investment contracts only). The public may view AR 215–4, Nonappropriated Fund Contracting Regulation is available at *http://www.apd.army.mil/pdffiles/r215_4.pdf.*

Regulatory Flexibility Act: This action is not considered rule-making within the maning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act: The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.,* does not apply because no information collection or record-keeping requirements are imposed on contractors, offerors, or members of the public.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–5925 Filed 3–24–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Environmental Impact Statement/Environmental Impact Report for the San Luis Obispo Creek Watershed Waterway Management Plan, City and County of San Luis Obispo, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS) has been prepared for the San Luis Obispo Creek Watershed Waterway Management Plan within the City and County of San Luis Obispo, California and is available for review and comment.

DATES: In accordance with the National Environmental Policy Act (NEPA), we have filed the DEIS with the Environmental Protection Agency (EPA) for publication of their notice of availability in the Federal Register. The EPA notice officially starts the 45-day review period for this document. It is the goal of the Corps of Engineers to have the COE notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for comments on the DEIS. Comments on the Draft EIS must be submitted to the address below under Further Contact Information and must be received no later than 5 p.m. Pacific Standard Time, Monday, May 9, 2005.

ADDRESSES: The Draft Environmental Impact Statement/Environmental Impact Report can be viewed online at *http://www.slocity.org/publicworks/documents.asp* (Waterway Management Plan documents). Copies of the Draft Environmental Impact Statement/Environmental Impact Report and appendices are also available for review at the following government offices and libraries:

Government Offices—City Public Works Department, 955 Morro Street, San Luis Obispo, California.

Libraries: San Luis Obispo City/County Library, 995 Palm Street, San Luis Obispo, CA 93401.

FOR FURTHER INFORMATION CONTACT: Bruce Henderson, Senior Project Manager, U.S. Army Corps of Engineers, Ventura Regulatory Field Office, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, Telephone: 805/585–2145, *bruce.a.henderson@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This EIS was prepared as part of a joint document by the U.S. Army Corps of Engineers in conjunction with the City of San Luis Obispo and the San Luis Obispo County Flood Control & Water Conservation District (Zone 9) (City/Zone 9) pursuant to corresponding responsibilities under NEPA and the California Environmental Quality Act (CEQA, resulting in preparation of an Environmental Impact Report).

The Corps of Engineers and City/Zone 9 prepared the Draft EIS/EIR evaluating the potential environmental impacts of the proposed San Luis Obispo Creek Watershed Waterway Management Plan (Program). The Program is a combination of policies, programs and plans proposed to address flooding and flood control along San Luis Obispo Creek and its tributaries on a regional or watershed-wide basis. Project planning for activities and development within and affecting the stream corridor has historically been managed or guided by policies of various agencies with little coordinated effort at consistent management techniques. The Program is comprised of a Waterway Management Plan (WMP), Stream Maintenance and Management Plan (SMMP), and Drainage Design Manual (DDM), which represent a consolidated effort to provide a consistent management

program for the waterway and watershed.

There is a history of flooding along SLO Creek, with its attendant problems of erosion, and water quality and ecological issues. However, there are relatively few structural flood control features. The City/Zone 9 identified the need to manage flooding within the SLO Creek watershed because urban uses have developed along the creek and its tributaries in the natural floodway. The under-city culvert and other manmade structures have reduced the capacity of the creek to convey floodwaters. The Program's objectives include (1) identification and prioritization of the amount and extent of flooding, erosion, water quality and ecological issues in the SLO Creek; (2) identification and development of programs to address these issues; (3) preparation of guidelines for design of future development and reconstructed developments in the SLO Creek watershed; (4) preparation of a programmatic environmental and permitting review process for implementation of Objectives 2 and 3 as applicable; and (5) development of an implementation program. It is anticipated this Program will result in a means by which the Corps and other pertinent agencies may comprehensively assess identified proposed actions within jurisdictional waters of the United States that encompass standard maintenance and replacement or improvement of existing flood structures, or repair of banks, channels, and stream habitats, and could include identified stream bank repair projects provided they are consistent with the Program. Other capital improvement projects for flood management not part of the City/Zone 9 Annual Work Plan would be subject to further review by the Corps and the local agency prior to implementation.

Currently, the Corps asserts discretionary authority over bank stabilization measures within the SLO Creek and its tributaries. This was based on a determination that proposals to channelize or otherwise substantially impact the Creek and its tributaries, such as by armoring the banks, would result in greater than minimal cumulative impacts. In 1996, the Corps requested that a comprehensive plan for the watershed be developed, the purpose and focus of which to ensure that aquatic resource impacts are avoided and minimized to the maximum extent practicable. The Corps suggested that the plan include an analysis of alternatives that meet the overall project purpose of anticipated flood control needs, an assessment of habitat quantity and quality, an assessment of habitat fragmentation along the stream corridors, and mitigation measures to offset unavoidable adverse impacts.

Dated: March 10, 2005.

Alex C. Dornstauder,

Colonel, U.S. Army, District Engineer.

[FR Doc. 05–5903 Filed 3–24–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement and Dam Safety Assurance Program Evaluation Report for Harlan County Lake Located in Harlan County, Nebraska Near the Cities of Alma and Republican City, NE

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Kansas City District, intends to prepare a Draft Environmental Impact Statement (DEIS) and Dam Safety Assurance Program (DSAP) Evaluation Report for Harlan County Lake. Harlan County Lake is located near the cities of Alma and Republican City, Nebraska, immediately north of the Nebraska-Kansas border. The dam provides irrigation water supply to areas on both sides of the state line and flood control for the Republican River Basin between Harlan County, Nebraska and Milford Lake located in east central Kansas near Junction City, in Clay and Geary counties. The DEIS study will analyze the economic, environmental, and social impacts that may occur as a result of the various alternatives solutions being considered in the DSAP Report for Harlan County Lake, The DSAP Report will analyze both structural and non-structural solutions for Harlan County Dam's current tainter gate operational issues, the dam's overall hydrologic adequacy, spillway stability and the interdependence of all these factors on the performance of the dam.

FOR FURTHER INFORMATION CONTACT: Eric S. Lynn, Project Manager, Plan Formulation Section, ATTN: CENWK–PM–PF, U.S. Army Engineer District, Kansas City, 601 East 12th Street, Kansas City, Missouri 64106–2896, Phone 816–983–3258 or e-mail to: *Eric.S.Lynn@usace.army.mil*. Additional information is also available on the Harlan County Dam Project Web site *http://www.nwk.usace.army.mil/projects/hcdsap/*.

SUPPLEMENTARY INFORMATION:

1. Background

The Republican River Flood of 1935 resulted in major property damage in the Republican River Basin and the loss of 113 lives. The Harlan County Dam project was authorized under the Flood Control Act of 1941, Public Law 228, 77th Congress, as part of the Missouri River Basin Comprehensive Plan. The Flood Control Act of 1944 authorized project purposes of flood control, irrigation, fish and wildlife, and recreation. The U.S. Bureau of Reclamation manages Harlan County Dam's 150,000 acre-feet of storage allocated for irrigation. Harlan County Dam began operation in 1952 will full multipurpose pool being achieved in 1957. Engineering analysis of Harlan County Dam's 18 tainter gates indicated operating issues if the gates were required to operate as designed under full water load conditions to control reservoir water levels to the top of flood control pool elevation of 1973.5 feet, mean sea level (msl). The tainter gates are 30 feet by 40 feet made of structural steel. The design of the Harlan County Dam tainter gates is similar to the Folsom Dam tainter gates that experienced structural and mechanical failure in 1995. Harlan County Dam engineering studies resulted in the adoption in 2003 of a 5-year Interim Operating Plan for Harlan County Dam with top of flood control pool elevation being lowered to 1960.5 msl. At this lower elevation only 17.5 feet of water would be on the gates prior to releasing of floodwater as compared to approximately 30 feet of water if the gates were completely operating as designed. The maximum height on the gates to date is 12.5 feet. The Interim Operating Plan has resulted in the reduction of the flood control storage capacity of the reservoir by approximately 50 percent from 500,000 acre feet to 227,000 acre feet. To date, this lower storage capacity has had no effect on the dam's operation for flood control, irrigation, recreation, or fish and wildlife use. The Interim Operating Plan's top of flood control pool of 1960.5 msl elevation is 4.8 feet higher than the Dam's highest historic pool elevation. Engineering analysis indicates that if corrective action is not taken the gate mechanisms will probably continue to corrode and deteriorate requiring potentially more stringent operating restrictions at some point in the future. There are substantive economic, social,

environmental and cultural issues associated with alternatives being evaluated for the operation of Harlan County Dam including flood control, irrigation, agriculture, recreation, tourism, cultural resources, aesthetics, transportation, project costs, and other factors to be identified during the scoping process.

2. Scoping Process

The one or more scoping meetings planned during 2005 for the Dam Safety Assurance Program will also provide information to the public regarding the Harlan County Dam Interim Operating Plan and the potential impacts this Plan may have on the Republican River Basin. The scoping meeting(s) will be advertised in local newspapers, and a mailing list will be used to notify the public and other interested parties of the meetings. The public, native American tribes, and affected government agencies at the local, State, and Federal level are encouraged to participate in the scoping process by forwarding written comments to the above noted address. The scoping process is designed to obtain comments and input for the DEIS and DSAP Report from the public concerning alternative measurers that may be considered for the future operation of the Harlan County Dam. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and the status of EIS document preparation. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as per regulations of the Council of Environmental Quality (Code of Federal Regulations Parts 40 CFR 1500–1508), and other applicable laws, regulations, and guidelines.

3. Availability of EIS Documents

The availability of the Draft and Final EIS will be presented in the **Federal Register** and by notices in the local newspapers. The mailing list will also be used to notify interested parties of the availability and location of the Draft and Final EIS for public review.

Dated: March 11, 2005.

David L. Combs,

Chief, Planning Branch, Kansas City District, Corps of Engineers.

[FR Doc. 05–5923 Filed 3–24–05; 8:45 am]

BILLING CODE 3710–KN–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Preparation To Improve Services and Results for Children With Disabilities—Combined Priority for Personnel Preparation; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325K.

Note: This notice includes one priority with five focus areas, and funding information for each focus area of the competition.

Dates: Applications Available: March 28, 2005.

Deadline for Transmittal of Applications: May 9, 2005.

Deadline for Intergovernmental Review: July 8, 2005.

Eligible Applicants: Institutions of higher education.

Estimated Available Funds: $15,000,000.

For funding information regarding each of the specific focus areas of the priority, see the chart in the Award Information section of this notice.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In this competition, we are establishing one absolute priority (with five focus areas), a competitive preference priority within one of these five focus areas, and two separate competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(v), these priorities are from allowable activities specified in the statute (see section 662(d) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is, except as otherwise specified, an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this absolute priority.

This priority is:

Combined Priority for Personnel Preparation

Background: State agencies, university training programs, local schools, and other community-based entities confirm the importance and difficulty of improving training programs for personnel to serve children with disabilities or infants and toddlers with disabilities.

The national demand for fully credentialed special education, related services and early intervention personnel to serve children with disabilities also exceeds available supply. Thus, Federal support is required to improve both the quality and supply of personnel who serve children with disabilities.

Priority: The purpose of this priority is to increase the number and quality of personnel who are fully credentialed to serve children with disabilities, especially in areas of chronic shortage, by supporting projects that prepare special education, early intervention, and related services personnel at the associate, baccalaureate, master's and specialist levels. In order to be eligible under this priority, programs must provide training and support for students to complete, within the term of the project, a degree and/or State certification, professional license, or State endorsement in early intervention, special education or related services. Programs preparing students to be special education paraprofessionals or related services assistants are also eligible under this priority. The Secretary is particularly interested in programs that prepare special educators who provide instruction in core academic areas to children with disabilities to be highly qualified under section 602(10) of IDEA, in accordance with State requirements. The Secretary is also particularly interested in programs that provide enhanced support for beginning special educators (see section 662(b)(3) of IDEA).

Absolute Priority Requirements: Projects funded under this absolute priority must—

(a) Demonstrate, in the narrative section of the application under ''Quality of Project Services'', how—

(1) Research that has been shown to be effective in improving outcomes for children with disabilities is incorporated into training requirements and reflected in required coursework for

the proposed training program and include relevant research citations;

(2) The program is designed to offer integrated training and practice opportunities that will enhance the skills of appropriate personnel who share responsibility for providing effective services to children with disabilities;

(3) The program prepares personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds, including limited English proficient children with disabilities, by—

(i) Identifying the competencies needed for personnel to work effectively with culturally and linguistically diverse populations; and

(ii) Infusing those competencies into early intervention, special education, and related services training programs;

(4) The program is designed to develop or improve and implement mutually beneficial partnerships with schools and other service settings to promote continuous improvement in preparation programs and in service delivery;

(5) The program includes field-based training opportunities for students in diverse settings, such as schools and settings in high-poverty communities, in rural areas and in urban areas;

(6) The training program equips scholars with the knowledge and skills necessary to effectively assist children in achieving State learning standards; and

(7) Student support systems (including tutors, mentors, and other innovative practices) are provided to enhance student retention and success in the program;

(b) Include in the application narrative under ''Quality of Project Evaluation'', a clear, effective plan for evaluating the extent to which graduates of the training program have the knowledge and skills necessary to provide research-based instruction and services that result in improved outcomes for children with disabilities;

(c) Communicate student evaluation results to the Office of Special Education Programs (OSEP) in required annual performance reports for continuation funding and the project's final performance report;

(d) Budget for a two-day Project Director's meeting in Washington, DC, during each year of the project;

(e) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility;

(f) Include, in the application Appendix, all course syllabi for the proposed training program. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (a) of this section of the priority;

(g) Submit annual data on each scholar who receives grant support. Projects funded under this priority must submit this scholar data electronically within 60 days after the end of each grant budget year. Applicants are encouraged to visit the Personnel Prep Data (PPD) Web site at www.osepppd.org for further information. This data collection is in addition to and does not supplant the annual grant performance report required of each grantee for continuation funding (34 CFR 75.590); and

(h) Assure that at least 60 percent of the total requested budget be used for student training stipends.

Statutory and Other Requirements: To be considered for an award under this priority, applicants must also satisfy the following requirements authorized under sections 662(e)(2) and (3), section 662(h)(1) and section 682(a)(1)(A) of IDEA:

(a) Demonstrate that the activities described in the application will address needs identified by the State or States the applicant proposes to serve and that the State or States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities (see sections 662(e)(2)(A) and 662(e)(3) of IDEA). Letters from one or more States that the project proposes to serve could be one method for addressing this requirement;

(b) Demonstrate that the applicant and one or more State educational agencies—or, if appropriate, State appointed lead agencies responsible for providing early intervention services—or local educational agencies will cooperate in carrying out and monitoring the proposed project (see section 662(e)(2)(B) of IDEA);

(c) Involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA); and

(d) Provide an assurance that the applicant will ensure that individuals who receive financial assistance under the proposed project agree to meet the service obligation requirements, or repay all or part of the amount of the scholarship, in accordance with section 662(h)(1) of IDEA and the *Additional Requirements* section of this notice. Applicants must describe how they will inform scholarship recipients of this service obligation requirement.

Focus Areas

Within this absolute priority, the Secretary intends to support projects under the following five (5) focus areas: (a) Training of Early Intervention and Early Childhood Personnel, (b) Training of Low-Incidence Personnel, (c) Training of High-Incidence Personnel, (d) Training Programs for Related Services, Speech/Language, and Adapted Physical Education Personnel, and (e) Training Programs in Minority Institutions. Provided that there are a sufficient number of high quality applications, a total of up to 5 of the awards made in focus areas (b), (c) and (e) combined will be to applicants training special education teachers that demonstrate how grant supported scholars who complete the proposed program will meet State certification standards in special education and will be highly qualified under section 602(10) of IDEA.

Provided that there are a sufficient number of high quality applications, a total of up to 5 of the awards made in focus areas (b), (c) and (e) combined will be to applicants training beginning special education teachers that demonstrate how the program is designed to carry out the activities described in one or both paragraphs (A) or (B) in section 662(b)(3) of IDEA.

Note: Applicants must identify the focus area (*i.e.*, (a), (b), (c), (d), or (e)) under which they are applying as part of the project title on the application cover sheet and may not submit the same proposal under more than one focus area. In addition, applicants applying under focus areas (b), (c) or (e) that are addressing either of the categories of intended awards under the preceding paragraphs (*i.e.*, highly qualified and/or beginning special educator training) must also identify the intended award area at the beginning of the Application Abstract.

Focus Area a: Training of Early Intervention and Early Childhood Personnel. For the purpose of this focus area, early intervention personnel are those who are trained to provide services to infants and toddlers with disabilities and early childhood personnel are those who are trained to provide services to children with disabilities ages 3 through 5. In States where certification in early intervention (EI) is combined with certification in early childhood (EC), applicants may propose a combined EI/EC training project under this focus area. Projects training related services, speech/

language and/or adapted physical education personnel are not eligible under this focus area (see Focus Area d).

Focus Area b: Training of Low-Incidence Personnel. For the purpose of this focus area, low-incidence personnel are special education personnel, including paraprofessionals, trained to serve school-age children with low-incidence disabilities including visual impairments, hearing impairments, simultaneous vision and hearing impairments, significant cognitive impairments (severe mental retardation), orthopedic impairments, autism, and/or traumatic brain injury. Programs preparing special education personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, must prepare those individuals to provide those services in Braille. Projects training related services, speech/language and/or adapted physical education personnel are not eligible under this focus area (see Focus Area d). Projects training special education pre-school personnel are eligible under Focus Area a.

Focus Area c: Training of High-Incidence Personnel. For the purpose of this focus area, high-incidence personnel are special education personnel, including paraprofessionals, trained to serve school-age children with mild and/or moderate mental retardation, emotional disturbance, specific learning disability, other health impairment (including children with Attention Deficit Hyperactive Disorder) and/or children ages 5 through 9 with developmental delay. Projects training related services, speech/language and/or adapted physical education personnel are not eligible under this focus area (see Focus Area d). Projects training special education pre-school personnel are eligible under Focus Area a.

Focus Area d: Training Programs for Related Services, Speech/Language, and Adapted Physical Education Personnel. Programs training related services, speech/language or adapted physical education personnel to serve infants, toddlers, children and youth with high- and/or low-incidence disabilities are eligible within this focus area. For the purpose of this focus area, related services include, but are not limited to, psychological services, physical therapy, occupational therapy, therapeutic recreation, social work services, counseling services, audiology services (including personnel trained at the Doctor of Audiology level), and or speech/language services. Training programs in States where personnel trained to serve children with speech/language impairments are considered to be special educators are eligible under this focus area. Training programs preparing related services assistants are also eligible under this focus area.

Focus Area e: Training Programs in Minority Institutions. Programs in minority institutions that are training special education, including adapted physical education, and/or related services personnel to serve infants, toddlers, children and youth with high- and/or low-incidence disabilities are eligible within this focus area. Minority institutions include institutions with a minority student enrollment of 25 percent or more, which may include Historically Black Colleges and Universities and Tribal Colleges. Within this focus area and for the FY 2005 competition, projects that are recommended for funding and that have not received support under the IDEA Personnel Preparation Program in FY 2003 or FY 2004 will receive 10 competitive preference points.

Under Focus Area e, a project may budget for less than the required percentage (60 percent) for student training support if they can provide sufficient justification for any designation less than 60 percent for student scholarships. Sufficient justification for proposing less than 60 percent of the budget for student support would include support for activities such as program development, expansion of a program, or the addition of a new area of emphasis. Some examples include the following:

- A project that is starting a new program may request up to a year for program development and capacity building. In the initial project year, no student support would be required. Instead, a project could hire a new faculty member or a consultant to assist in program development.
- A project that is proposing to build capacity may hire a field supervisor so that additional students can be trained.
- A project that is expanding or adding a new emphasis area to the program may initially need additional faculty or other resources such as expert consultants, additional training supplies, or equipment that would enhance the program.

Projects that are funded to develop, expand, or to add a new area of emphasis to special education or related services programs must provide information on how these new areas will be maintained once Federal funding ends.

Note: The statute does not authorize the selection of trainees on the basis of race, ethnicity, gender, or disability status.

Competitive Preference Priorities: For FY 2005, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional five points for each priority depending on how well the application meets the priority.

These competitive preference priorities are:

Competitive Preference Priority 1: We give competitive preference to institutions of higher education that are educating regular education personnel to meet the needs of children with disabilities in integrated settings and educating special education personnel to work in collaboration with regular educators in integrated settings.

Note: Grant-supported scholarships should not be provided to students preparing to become regular education personnel as these students will not be able to meet the service obligation requirements under section 662(h) of IDEA.

Competitive Preference Priority 2: We give competitive preference to institutions of higher education based on the extent to which they successfully recruit individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals. In the case of a new project, the applicant must submit a plan with strategies on how it will meet this competitive preference.

Note: The statute does not authorize the *selection* of trainees on the basis of race, ethnicity, gender, or disability status.

Additional Requirements: Specific provisions contained in the regulations for this program, which are in 34 CFR part 304, no longer apply because they have been superseded by requirements in IDEA, as recently reauthorized and amended by the Individuals with Disabilities Education Improvement Act of 2004. Accordingly, for purposes of this competition, the following requirements will apply in lieu of the regulations in 34 CFR part 304.

Note: The Secretary will be issuing a notice of proposed rulemaking to amend part 304 to implement these recent changes in IDEA. The Secretary does not expect the final regulations to be substantially different from the requirements in this *Additional Requirements* section. However, the competition announced in this notice will be governed solely by the requirements in this notice.

Sec. A. Purpose.

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Development to Improve Services and Results for Children with Disabilities

program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 662(h) of IDEA and the requirements set forth in this *Additional Requirements* section of this notice.

Sec. B. Definitions that apply to this program.

The following definitions apply to this program:

Academic year means—

(1) A full-time course of study—

(i) Taken for a period totaling at least nine months; or

(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or

(2) For a part-time student, the accumulation of periods of part-time courses of study that is equivalent to an ''academic year'' under paragraph 1 of this definition.

Early intervention services means early intervention services as defined in section 632(4) of IDEA.

Full-time, for purposes of determining whether an individual is employed full-time in accordance with Sec. F (All references to ''Sec.'' refer to sections in these *Additional Requirements*), means a full-time position as defined by the individual's employer or by the agencies served by the individual.

Related services means related services as defined in section 602(26) of IDEA.

Repayment means monetary reimbursement of scholarship assistance in lieu of completion of a service obligation.

Scholar means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of IDEA.

Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, and books, and travel in conjunction with training assignments.

Service obligation means a scholar's employment obligation, as described in section 662(h) of IDEA and Sec. F.

Special education means special education as defined in section 602(29) of IDEA.

Sec. C. Allowable costs.

In addition to the allowable costs established in EDGAR in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Tuition and fees.

(b) Student stipends and books.

(c) Travel in conjunction with training assignments.

Sec. D. Requirements for grantees in disbursing scholarships.

Before disbursement of scholarship assistance to an individual, a grantee must—

(a) Ensure that the scholar—

(1) Is a citizen or national of the United States;

(2) Is a permanent resident of—

(i) Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(ii) The Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (during the period in which these entities are eligible to receive an award under the program); or

(3) Provides evidence from the U.S. Department of Homeland Security that the individual is—

(i) A lawful permanent resident of the United States; or

(ii) In the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

(b) Limit scholarship assistance to the amount by which the individual's cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under Title IV of the Higher Education Act; and

(c) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

Sec. E. Assurances that must be provided by a grantee.

Before receiving an award, a grantee that intends to grant scholarships under the program must include in its application an assurance that the following requirements will be satisfied:

(a) *Requirement for agreement.* Prior to granting a scholarship, the grantee will enter into a written agreement with each scholar that contains the terms and conditions required by Sec. F, explains the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to Sec. G, and provides the current Department address.

(b) *Standards for satisfactory progress.* The grantee must establish, notify students of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study.

(c) *Exit certification.* The grantee must establish policies and procedures for receiving written certification from scholars at the time of exit from the program that identifies—

(1) The number of years the scholar needs to work to satisfy the work requirements in Sec. F(d).

(2) The total amount of scholarship assistance received subject to Sec. F.

(3) The time period, consistent with Sec. F(f)(1), during which the scholar must satisfy the work requirements.

(4) As applicable, all other obligations of the scholar under Sec. F.

(d) *Information.* The grantee must provide the Secretary information, including records maintained under paragraph (c) of this Sec. E, that is necessary to carry out the Secretary's functions under this *Additional Requirements* section.

(e) *Notification to the Secretary.* If the grantee is aware that the scholar has chosen not to fulfill or will be unable to fulfill the obligation under Sec. F(d), the grantee must notify the Secretary when the scholar exits the program.

Sec. F. Requirements for scholars.

Individuals who receive scholarship assistance from grantees funded under this competition must:

(a) *Training.* Receive the training at the educational institution or agency designated in the scholarship;

(b) *Educational allowances.* Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under these *Additional Requirements*;

(c) *Satisfactory progress.* Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee;

(d) *Service obligation.* Upon exiting the training program under paragraph (a) of this Sec. F, subsequently maintain employment—

(1) On a full-time or full-time equivalent basis; and

(2) For a period of at least two years for every academic year for which assistance was received.

(e) *Eligible employment.* In order to meet the requirements of paragraph (d) of this Sec. F for any project funded under section 662 of IDEA, be employed in a position in which—

(1) A majority of the persons to whom the individual provides services are receiving special education, related services, or early intervention services from the individual;

(2) The individual spends a majority of his or her time providing special education or related services to children with disabilities or early intervention services to infants and toddlers with disabilities;

(3) If the position is supervisory, including principals, the individual spends a majority of his or her time employed in a position performing work

related to the individual's preparation under section 662 of IDEA by providing one or both of the following:

(i) Special education or related services to children with disabilities or early intervention services to infants and toddlers with disabilities; and

(ii) Supervision to others on issues directly related to special education or related services for children with disabilities or early intervention services for infants and toddlers;

(4) If the position is postsecondary faculty, the individual spends a majority of his or her time performing work related to the individual's preparation under section 662 of IDEA by preparing special education teachers and related services personnel to provide services to improve results for children with disabilities, including early intervention, educational, and transitional services; or

(5) If the position is in research, the individual spends a majority of his or her time performing research related to the individual's preparation under section 662 of IDEA that focuses on improving results for children with disabilities, including early intervention, educational, and transitional services.

(f) *Time period.* Meet the service obligation under paragraph (d) of this Sec. F as follows:

(1) Complete the service obligation within the period ending not more than the sum of the number of years required in paragraph (d)(2) of this Sec. F, as appropriate, plus three additional years, from the date the recipient completes the training for which the scholarship assistance was awarded.

(2) Obtain employment subsequent to the completion of one academic year of the training for which the scholarship assistance was received that otherwise meets the requirements of Sec. F(f)(1).

(g) *Part-time scholars.* Meet the service obligation in this Sec. F, as applied to a part-time scholar, based on the accumulated academic years of training for which the scholarship is received.

(h) *Information upon exit.* Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements under Sec. E(c).

(i) *Information after exit.* Within 60 days after exiting the program, and as necessary thereafter for any changes, provide the Department all information the Secretary needs to monitor the scholar's service obligation under this Sec. F, including social security number, address, employment setting, and employment status, via U.S. mail at the following address: Office of Special Education Programs, Research to Practice Division, Service Obligation Coordinator, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2600.

(j) *Repayment.* If not fulfilling the requirements in this Sec. F, subject to the provisions in Sec. G regarding a deferral or exception, repay any scholarship received, plus interest, in an amount proportional to the service obligation not completed as follows:

(1) The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(2)(i) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (4) of this subsection (j).

(ii) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(iii) No interest is charged for the period of time during which repayment has been deferred under Sec. G.

(3) Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(4) A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(i) The date the scholar informs the grantee or the Secretary that the scholar does not plan to fulfill the service obligation under the agreement.

(ii) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in this Sec. F.

(iii) Any date on which the scholar discontinues enrollment in the course of study under Sec. F(a).

(5) The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(6) Any amount of the scholarship that has not been repaid pursuant to (1) through (5) of this paragraph will constitute a debt owed to the United States that may be collected by the Secretary in accordance with 34 CFR part 30.

Sec. G. Requirements for obtaining a deferral or exception to performance or repayment under an agreement.

(a) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant an exception to the repayment requirement in Sec. F(j), in whole or part, if the scholar—

(1) Is unable to continue the course of study in Sec. F(j) or perform the service obligation because of a permanent disability; or

(2) Has died.

(b) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant a deferral of the repayment requirement in Sec. F(j) during the time the scholar—

(1) Is engaging in a full-time course of study at an institution of higher education;

(2) Is serving on active duty as a member of the armed services of the United States;

(3) Is serving as a volunteer under the Peace Corps Act; or

(4) Is serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice. With Respect to the *Additional Requirements,* section 437(d)(1) of the General Education Provisions Act exempts from the APA's notice and comment requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under section 662 of IDEA (the Personnel Development to Improve Services and Results for Children with Disabilities program), which was substantially revised by the Individuals with Disabilities Education Improvement Act of 2004. These *Additional Requirements* will apply to the FY 2005 grant competition only.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $15,000,000.

For funding information regarding each of the specific focus areas of the priority, see the chart in this section of this notice.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2005

CFDA No. and name	Estimated range of awards	Estimated average size of awards	Maximum award (per year)*	Estimated number of awards
84.325K Combination Priority for Personnel Preparation:				
Focus Area a: Training of Early Intervention and Early Childhood Personnel	$172,000–$200,000	$196,250	$200,000	11
Focus Area b: Training of Low-Incidence Personnel	194,969–200,000	196,200	200,000	23
Focus Area c: Training of High-Incidence Personnel	163,848–200,000	196,840	200,000	19
Focus Area d: Training Programs for Related Services, Speech/Language, and Adapted Physical Education Personnel	163,848–200,000	196,840	200,000	9
Focus Area e: Training Programs in Minority Institutions	186,234–200,000	196,450	200,000	13

*The Secretary does not intend to fund an application that proposes a budget exceeding the maximum award specified for a single budget period of 12 months.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.325K.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 28, 2005.

Deadline for Transmittal of Applications: May 9, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 8, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2005. The Combined Priority for Personnel Preparation-CFDA Number 84.325K competition is one of the competitions included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for the Combined Priority for Personnel Preparation-CFDA Number 84.325K competition at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA

number. Do not include the CFDA number's alpha suffix in your search. Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.

• If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.

• To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325K), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center ''Stop 4260, Attention: (CFDA Number 84.325K), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office. c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325K), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and ''if not provided by the Department ''in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number ''and suffix letter, if any ''of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary priorities, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary

priorities for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. In addition, to satisfy the requirements of the priority in this notice, you must submit annual data on each scholar who receives grant support through this program.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has established a set of performance measures that are designed to yield information on the effectiveness of the Personnel Preparation program. These measures include the extent to which scholars are successfully completing their program and the extent to which they are employed in the area(s) trained upon program completion.

If funded, applicants will be required to collect and report data on grant-supported students through the PPD Web site at *http://www.oespppd.org* (see paragraph (g) under the *Absolute Priority* section of this notice).

Beyond the performance measures specifically described in this notice, the Department is also currently developing measures that will be designed to yield information on various aspects of program quality (*e.g.*, the extent to which the curricula of training programs funded under this competition reflect the current knowledge base on effective practices; and the extent to which program graduates maintain employment for three or more years in the area(s) for which they were trained). Grantees will be asked to participate in assessing and providing information on program quality.

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Maryann McDermott, U.S. Department of Education, 400 Maryland Avenue, SW., room 4062, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7439.

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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

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/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of 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*.

Dated: March 3, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–5957 Filed 3–24–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Preparation To Improve Services and Results for Children With Disabilities—Preparation of Leadership Personnel; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325D.

Dates:

Applications Available: March 28, 2005.

Deadline for Transmittal of Applications: May 9, 2005.

Deadline for Intergovernmental Review: July 8, 2005.

Eligible Applicants: Institutions of higher education.

Estimated Available Funds: $4,800,000.

Estimated Range of Awards: $171,969–$200,000.

Estimated Average Size of Awards: $196,200.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $200,000 for a single budget period of 12 months.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants or toddlers with disabilities, or children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(d) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Preparation of Leadership Personnel

This priority supports projects that train personnel at the doctoral or post-

doctoral level in early intervention, special education or related services and at the advanced level (masters and specialists) in special education administration. In order to be eligible under this priority, programs must provide training and support for scholars to complete, within the performance period of the grant, a doctoral degree in early intervention, special education or related services or an advanced degree in special education administration.

Note: Training that leads to a Doctor of Audiology (D Aud) degree is not included as part of this priority.

The Preparation of Leadership Personnel Priority is limited to preservice doctoral and post-doctoral preparation of professional personnel in special education, related services and early intervention services for children with disabilities and graduate level training in special education administration and supervision. Therefore, only the following types of programs of study will meet the requirements of the priority:

1. A major in special education, related services or early intervention at the doctoral or post-doctoral level; and

2. Training at the advanced graduate level (masters and specialists programs) in special education administration and supervision.

Projects funded under this absolute priority must—

(a) Demonstrate in the narrative section of the application under ''Quality of Project Services'' how—

(1) The program prepares personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds by—

(i) Identifying the competencies needed for leadership personnel to understand and work with culturally and linguistically diverse populations (the competencies identified should reflect the current knowledge base); and

(ii) Infusing those competencies into early intervention, special education, and related services training programs.

(2) All relevant coursework for the proposed program reflects current research and pedagogy on—

(i) Participation and achievement in the general education curriculum and improved outcomes for children with disabilities; or

(ii) The provision of coordinated services in natural environments to improve outcomes for infants and toddlers with disabilities and their families.

(3) The program offers integrated training and practice opportunities that will enhance the collaborative skills of all personnel who share responsibility for providing effective services for children with disabilities.

(4) For programs that train personnel in early intervention, special education or related services, the program ensures that scholars are knowledgeable about (i) the provisions of the No Child Left Behind Act of 2001 (NCLB) that relate to students with disabilities, (ii) the IDEA and NCLB requirement that teachers be highly qualified, and (iii) the need to foster collaboration between regular and special education teachers.

(5) The proposed training program is aligned with State learning standards for children, if appropriate;

(b) Submit annual data on each scholar who receives grant support. Projects funded under this priority must submit this scholar data electronically within 60 days after the end of each grant budget year. Applicants are encouraged to visit the Personnel Prep Data (PPD) Web site at *http://www.osepppd.org* for further information. This data collection is in addition to and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590);

(c) Budget for a two-day Project Director's meeting in Washington, DC, during each year of the project;

(d) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility;

(e) Provide a detailed description of the program, including the sequence of the courses offered in the program;

(f) Include in the application narrative under ''Quality of Project Evaluation'', a clear, effective plan for evaluating the extent to which graduates of the training program have the knowledge and skills necessary to provide research-based instruction and services that result in improved outcomes for children with disabilities;

(g) Communicate student evaluation results to the Office of Special Education Programs (OSEP) in required annual performance reports for continuation funding and the project final performance report;

(h) Certify that all scholars will be recruited into the program with the intention of graduating from the program during the program performance period; and

(i) Certify that the institution will not require scholars recruited into the program to work as a condition of receiving a scholarship, *e.g.*, as graduate assistants, unless the work is required to complete their training program.

Statutory and Other Requirements: To be considered for an award, an applicant must also satisfy the following requirements authorized under sections 662(e) through (h) of IDEA—

(a) Demonstrate that the activities described in the application will address needs identified by the State or States the applicant proposes to serve and that the State or States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities (see sections 662(e)(2)(A) and 662(e)(3) of IDEA). Letters from the State or States that the project proposes to serve could be one method for addressing this requirement;

(b) Demonstrate that the applicant and one or more State educational agencies—or, if appropriate, State appointed lead agencies responsible for providing early intervention services—or local educational agencies will cooperate in carrying out and monitoring the proposed project (see section 662(e)(2)(B) of IDEA);

(c) Meet State and professionally recognized standards for the preparation of leadership personnel in special education, related services, or early intervention fields (see section 662(f)(2) of IDEA);

(d) If the program is addressing national or regional needs, demonstrate the existence of the needs through appropriate research data;

(e) Provide an assurance that the applicant will ensure that individuals who receive financial assistance under the proposed project agree to subsequently work in the appropriate field, for a period of 2 years for every year for which the scholarship was received, or repay all or part of the amount of the scholarship, in accordance with section 662(h)(1) of IDEA and the *Additional Requirements* section of this notice. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) As authorized under section 662(g) of IDEA, applicants must designate at least 65 percent of the total requested budget for scholarship support or provide justification for any designation less than 65 percent. Sufficient justification for proposing less than 65 percent of the budget for scholarship support would include expansion of a program, or the addition of a new area of emphasis. Examples include:

- Long distance training programs that may require Web Masters or adjunct professors or mentors in rural areas.

• A project that is expanding or adding a new emphasis area to the program may need additional faculty or other resources such as expert consultants, additional training supplies, or equipment that would enhance the program.

Projects that are funded to develop, expand, or to add a new area of emphasis to special education or related services programs must provide information on how these new areas will be sustained once Federal funding ends.

Additional Requirements: Specific provisions contained in the regulations for this program, which are in 34 CFR part 304, no longer apply because they have been superseded by requirements in IDEA, as recently reauthorized and amended by the Individuals with Disabilities Education Improvement Act of 2004. Accordingly, for purposes of this competition, the following requirements will apply in lieu of the regulations in 34 CFR part 304.

Note: The Secretary will be issuing a notice of proposed rulemaking to amend part 304 to implement these recent changes in IDEA. The Secretary does not expect the final regulations to be substantially different from the requirements in this *Additional Requirements* section. However, the competition announced in this notice will be governed solely by the requirements in this notice.

Sec. A. Purpose

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Development to Improve Services and Results for Children with Disabilities program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 662(h) of IDEA and the requirements set forth in this *Additional Requirements* section of this notice.

Sec. B. Definitions That Apply to This Program

The following definitions apply to this program:

Academic year means—

(1) A full-time course of study—

(i) Taken for a period totaling at least nine months; or

(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or

(2) For a part-time student, the accumulation of periods of part-time courses of study that is equivalent to an ''academic year'' under paragraph 1 of this definition.

Early intervention services means early intervention services as defined in section 632(4) of IDEA.

Full-time, for purposes of determining whether an individual is employed full-time in accordance with Sec. F (All references to ''Sec.'' refer to sections in these *Additional Requirements*), means a full-time position as defined by the individual's employer or by the agencies served by the individual.

Related services means related services as defined in section 602(26) of IDEA.

Repayment means monetary reimbursement of scholarship assistance in lieu of completion of a service obligation.

Scholar means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of IDEA.

Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, and books, and travel in conjunction with training assignments.

Service obligation means a scholar's employment obligation, as described in section 662(h) of IDEA and Sec. F.

Special education means special education as defined in section 602(29) of IDEA.

Sec. C. Allowable Costs

In addition to the allowable costs established in EDGAR in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Tuition and fees.

(b) Student stipends and books.

(c) Travel in conjunction with training assignments.

Sec. D. Requirements for Grantees in Disbursing Scholarships

Before disbursement of scholarship assistance to an individual, a grantee must—

(a) Ensure that the scholar—

(1) Is a citizen or national of the United States;

(2) Is a permanent resident of—

(i) Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(ii) The Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (during the period in which these entities are eligible to receive an award under the program); or

(3) Provides evidence from the U.S. Department of Homeland Security that the individual is—

(i) A lawful permanent resident of the United States; or

(ii) In the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

(b) Limit scholarship assistance to the amount by which the individual's cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under Title IV of the Higher Education Act; and

(c) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

Sec. E. Assurances That Must Be Provided by a Grantee

Before receiving an award, a grantee that intends to grant scholarships under the program must include in its application an assurance that the following requirements will be satisfied:

(a) *Requirement for agreement*. Prior to granting a scholarship, the grantee will enter into a written agreement with each scholar that contains the terms and conditions required by Sec. F, explains the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to Sec. G, and provides the current Department address.

(b) *Standards for satisfactory progress*. The grantee must establish, notify students of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study.

(c) *Exit certification*. The grantee must establish policies and procedures for receiving written certification from scholars at the time of exit from the program that identifies—

(1) The number of years the scholar needs to work to satisfy the work requirements in Sec. F(d).

(2) The total amount of scholarship assistance received subject to Sec. F.

(3) The time period, consistent with Sec. F(f)(1), during which the scholar must satisfy the work requirements.

(4) As applicable, all other obligations of the scholar under Sec. F.

(d) *Information*. The grantee must provide the Secretary information, including records maintained under paragraph (c) of this Sec. E, that is necessary to carry out the Secretary's functions under this *Additional Requirements* section.

(e) *Notification to the Secretary*. If the grantee is aware that the scholar has chosen not to fulfill or will be unable to

fulfill the obligation under Sec. F(d), the grantee must notify the Secretary when the scholar exits the program.

Sec. F. Requirements for Scholars

Individuals who receive scholarship assistance from grantees funded under this competition must:

(a) *Training.* Receive the training at the educational institution or agency designated in the scholarship;

(b) *Educational allowances.* Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under these *Additional Requirements*;

(c) *Satisfactory progress.* Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee;

(d) *Service obligation.* Upon exiting the training program under paragraph (a) of this Sec. F, subsequently maintain employment—

(1) On a full-time or full-time equivalent basis; and

(2) For a period of at least two years for every academic year for which assistance was received.

(e) *Eligible employment.* In order to meet the requirements of paragraph (d) of this Sec. F for any project funded under section 662 of IDEA, be employed in a position in which—

(1) A majority of the persons to whom the individual provides services are receiving special education, related services, or early intervention services from the individual;

(2) The individual spends a majority of his or her time providing special education or related services to children with disabilities or early intervention services to infants and toddlers with disabilities;

(3) If the position is supervisory, including principals, the individual spends a majority of his or her time employed in a position performing work related to the individual's preparation under section 662 of IDEA by providing one or both of the following:

(i) Special education or related services to children with disabilities or early intervention services to infants and toddlers with disabilities; and

(ii) Supervision to others on issues directly related to special education or related services for children with disabilities or early intervention services for infants and toddlers;

(4) If the position is postsecondary faculty, the individual spends a majority of his or her time performing work related to the individual's preparation under section 662 of IDEA by preparing special education teachers and related services personnel to provide services to improve results for children with disabilities, including early intervention, educational, and transitional services; or

(5) If the position is in research, the individual spends a majority of his or her time performing research related to the individual's preparation under section 662 of IDEA that focuses on improving results for children with disabilities, including early intervention, educational, and transitional services.

(f) *Time period.* Meet the service obligation under paragraph (d) of this Sec. F as follows:

(1) Complete the service obligation within the period ending not more than the sum of the number of years required in paragraph (d)(2) of this Sec. F, as appropriate, plus three additional years, from the date the recipient completes the training for which the scholarship assistance was awarded.

(2) Obtain employment subsequent to the completion of one academic year of the training for which the scholarship assistance was received that otherwise meets the requirements of Sec. F(f)(1).

(g) *Part-time scholars.* Meet the service obligation in this Sec. F, as applied to a part-time scholar, based on the accumulated academic years of training for which the scholarship is received.

(h) *Information upon exit.* Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements under Sec. E(c).

(i) *Information after exit.* Within 60 days after exiting the program, and as necessary thereafter for any changes, provide the Department all information the Secretary needs to monitor the scholar's service obligation under this Sec. F, including social security number, address, employment setting, and employment status, via U.S. mail at the following address: Office of Special Education Programs, Research to Practice Division, Service Obligation Coordinator, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2600.

(j) *Repayment.* If not fulfilling the requirements in this Sec. F, subject to the provisions in Sec. G regarding a deferral or exception, repay any scholarship received, plus interest, in an amount proportional to the service obligation not completed as follows:

(1) The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(2)(i) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (4) of this subsection (j).

(ii) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(iii) No interest is charged for the period of time during which repayment has been deferred under Sec. G.

(3) Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(4) A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(i) The date the scholar informs the grantee or the Secretary that the scholar does not plan to fulfill the service obligation under the agreement.

(ii) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in this Sec. F.

(iii) Any date on which the scholar discontinues enrollment in the course of study under Sec. F(a).

(5) The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(6) Any amount of the scholarship that has not been repaid pursuant to (1) through (5) of this paragraph will constitute a debt owed to the United States that may be collected by the Secretary in accordance with 34 CFR part 30.

Sec. G. Requirements for Obtaining a Deferral or Exception to Performance or Repayment Under an Agreement

(a) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant an exception to the repayment requirement in Sec. F(j), in whole or part, if the scholar—

(1) Is unable to continue the course of study in Sec. F(j) or perform the service obligation because of a permanent disability; or

(2) Has died.

(b) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant a deferral of the repayment requirement in Sec. F(j) during the time the scholar—

(1) Is engaging in a full-time course of study at an institution of higher education;

(2) Is serving on active duty as a member of the armed services of the United States;

(3) Is serving as a volunteer under the Peace Corps Act; or

(4) Is serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice. With respect to the *Additional Requirements*, section 437(d)(1) of the General Education Provisions Act exempts from the APA's notice and comment requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under section 662(d) of IDEA (the Personnel Development to Improve Services and Results for Children with Disabilities program—Preparation of Leadership Personnel), which was substantially revised by the Individuals with Disabilities Education Improvement Act of 2004. These *Additional Requirements* will apply to the FY 2005 grant competition only.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,800,000.

Estimated Range of Awards: $171,969–$200,000.

Estimated Average Size of Awards: $196,200.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $200,000 for a single budget period of 12 months.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.325D.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 28, 2005.

Deadline for Transmittal of Applications: May 9, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 8, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2005. Preparation of Leadership Personnel–CFDA Number 84.325D is one of the competitions included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for the Preparation of

Leadership Personnel-CFDA Number 84.325D competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.
- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.
- To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .PDF (portable document) or .RTF (rich text) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by email that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325D), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325D), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325D), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package

and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. In addition, to satisfy the requirements of the priority in this notice, you must submit annual data on each scholar who receives grant support through this program.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has established a set of performance measures that are designed to yield information on the effectiveness of the Personnel Preparation program. These measures include the extent to which scholars are successfully completing their program and the extent to which they are employed in the area(s) trained upon program completion.

If funded, applicants will be required to collect and report data on grant-supported scholars through the PPD Web site at *http://www.oespppd.org* (*see* paragraph (b) under the *Absolute Priority* section of this notice).

Beyond the performance measures specifically described in this notice, the Department is also currently developing measures that will be designed to yield information on various aspects of program quality (e.g., the extent to which the curricula of training programs funded under this competition reflect the current knowledge base on effective practices; and the extent to which program graduates maintain employment for three or more years in the area(s) for which they were trained). Grantees will be asked to participate in assessing and providing information on program quality.

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Robert Gilmore, U.S. Department of Education, 400 Maryland Avenue, SW., room 4083, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7354.

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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

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/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of 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.*

Dated: March 3, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–5958 Filed 3–24–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–521–000; FERC–521]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 18, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration on the collection of information are due May 25, 2005.

ADDRESSES: Copies of the proposed collection of information can be obtained from the Commission's Web site *(http://www.ferc.gov/docs-filings/elibrary.asp)* or to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to The Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC05–521–000. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing'', and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's Home page using the ''eLibrary'' link. For user assistant, contact *FERCONlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–521 ''Payments for Benefits from Headwater Benefits'' (OMB No. 1902–0087) is used by the Commission to implement the statutory provisions of section 10(f) of the Federal Power Act (FPA) (16 U.S.C. 803). The FPA authorizes the Commission to determine headwater benefits received by downstream hydropower project owners. Headwater benefits are the additional energy production possible at a downstream hydropower project resulting from the regulation of river flows by an upstream storage reservoir.

When the Commission completes a study of a river basin, it determines headwater benefits charges that will be apportioned among the various downstream beneficiaries. A headwater benefits charge, and the cost incurred by the Commission to complete an evaluation are paid by downstream hydropower project owners. In essence, the owners of non-federal hydropower projects that directly benefit from a headwater(s) improvement must pay an equitable portion of the annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury. The regulations provide for apportionment of these costs between the headwater project and downstream projects based on downstream energy gains and propose equitable apportionment methodology that can be applied to all rivers basins in which headwater improvements are built. The data the Commission requires owners of non-federal hydropower projects to file for determining annual charges is specified in 18 Code of Federal Regulations (CFR) part 11.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
3	1	40	120

Estimated cost burden to respondents is $6,262.00. (120 hours/2080 hours per year times $108,558 per year average per employee = $ 6,263). The cost per respondent is $191.00.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1298 Filed 3–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–283–000, ER05–283–001 and ER05–283–002]

JPMorgan Chase Bank, N.A.; Notice of Issuance of Order

March 18, 2005.

JPMorgan Chase, N.A. (JPMorgan) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of energy, capacity and ancillary services at market-based rates. JPMorgan also requested waiver of various Commission regulations. In particular, JPMorgan requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by JPMorgan.

On March 17, 2005, the Commission granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by JPMorgan should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is April 18, 2005.

Absent a request to be heard in opposition by the deadline above, JPMorgan is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of JPMorgan, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of JPMorgan's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The

Commission strongly encourages electronic filings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1299 Filed 3–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–230–009, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

March 18, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. ER04–230–009]

Take notice that on March 9, 2005, the New York Independent Operator, Inc. (NYISO) submitted a request for waiver of tariff provisions as needed to enable the NYISO to correct errors in price determinations resulting from certain problems encountered in the implementation of the NYISO's Standard Market Design version 2 software. The NYISO has requested expedited action.

Comment Date: 5 p.m. eastern time on March 28, 2005.

2. PJM Interconnection, L.L.C.

[Docket No. ER05–626–001]

Take notice that on March 4, 2005, PJM Interconnection, L.L.C. (PJM) submitted a clarification to its February 18, 2005, filing submitting revised tariff sheets in compliance with the Order No. 2003–B issued December 20, 2004, *Standardization of Generator Interconnection Agreements and Procedures,* 109 FERC ¶ 61,287 (2004). PJM states that the revised tariff sheets should have an effective date of January 19, 2005, not February 18, 2005 as previously stated in the notice issued February 24, 2005 in Docket No. ER05–626–000.

Comment Date: 5 p.m. eastern time on March 25, 2005.

3. Premcor Power Marketing LLC

[Docket No. ER05–680–000]

Take notice that on March 4, 2005, Premcor Power Marketing LLC (Premcor Power) submitted for filing a petition for acceptance of its initial rate schedule and the grant of certain blanket approvals, including the authority to sell electricity at market-based rates, and the grant of waiver of certain Commission regulations. Premcor Power states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Premcor Power further states it is not engaged in the business of generating or transmitting electric power.

Comment Date: 5 p.m. eastern time on March 25, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1302 Filed 3–24–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6661–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–F65048–WI Rating EC2, Lakewood/Laona Plantation Thinning Project, To Implement Vegetation Management Activities, Chequamegon-Nicolet National Forest, Lakewood Ranger District, Forest, Langlade, and Oconto Counties, WI.

Summary: EPA expressed environmental concerns about the proposed project's cumulative and indirect impacts.

ERP No. D–COE–B09801–MA Rating 3, Cape Wind Energy Project, Construct and Operate 130 Wind Turbine Generators on Horseshoe Shoal in Nantucket Sound, MA.

Summary: EPA commented that the information and analysis provided in the Draft EIS was inadequate, noting that the DEIS does not provide enough information to fully characterize baseline environmental conditions, the environmental impacts of the project, and alternatives that avoid or minimize those impacts.

ERP No. D–COE–G32057–TX Rating LO, Cedar Bayou Navigation Channel (CBNC) Improvements Project, Implementation, Near Baytown in Harris and Chambers Counties, TX.

Summary: EPA had no objections to the proposed alternative.

ERP No. D–SFW–K99034–CA Rating EC2, Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP), Santa Rosa and San Jacinto Mountains Trails Plan, Issuance of Incidental Take Permits, Riverside County, CA.

Summary: EPA expressed environmental concerns about water and air quality impacts, and requested additional information regarding consultation with tribal governments, environmental justice issues, enforcement of the Plan, and impacts to cultural resources and migratory birds.

ERP No. DS–NPS–K65325–CA Rating LO, Merced Wild and Scenic River Revised Comprehensive Management Plan, Amend and Supplement Information, Yosemite National Park, El Portal Administrative Site, Tuolume, Merced, Mono, Mariposa and Madera Counties, CA.

Summary: EPA has no objections to the preferred alternative.

However, EPA requests that the Park Service consider additional protection measures for the exceptional cultural resources in El Portal when delineating and zoning the river boundary.

Final EISs

ERP No. F–AFS–E65069–AL, Longleaf Ecosystem Restoration Project, Proposes a Five-Year Project to Begin Restoration of Native Longleaf, Talladega National Forest, Oakmulgee District, Tuscaloosa, Hale, Bibbs, and Perry Counties, AL.

Summary: EPA supports the Forest Service in its efforts to restore the longleaf pine ecosystem and enhance red-cockade woodpecker habitat, and has no objections to this project.

ERP No. F–AFS–J65410–WY, Upper Green River Area Rangeland Project, Propose Site Specific Grazing Management Practices, Bridger-Teton Forest, Sublette, Teton and Fremont Counties, WY.

Summary: The Final EIS was not responsive to EPA's comments on the Draft EIS. EPA continues to express environmental concerns with potential adverse impacts to water quality, aquatic resources, and riparian areas from livestock grazing.

ERP No. F–DOI–K99033–00, Programmatic EIS—Lower Colorado River Multi-Species Conservation Program, Issuing a Incidental Take Permit based on the Plan, Extending from Lake Mead to the Southerly International Boundary with Mexico, AZ, NV and CA.

Summary: EPA's concerns have been addressed; therefore, EPA has no objection to the action as proposed.

ERP No. F–FHW–F40382–MN, Ayd Mill Road Corridor, Improvements from I–35 E to St. Anthony Avenue (I–94) 2.6 kilometer (1.6 miles), Funding, City of Saint Paul, Ramsey County, MN.

Summary: EPA's concerns regarding mitigation to protect surface water quality have been satisfactorily addressed; therefore, EPA has no objection to the action as proposed.

ERP No. F–NAS–K11114–HI, Outrigger Telescopes Project, Proposed for the W.M. Keck Observatory Site within the Mauna Kea Science Reserve, Funding, Construction, Installation and Operation, Island of Hawaii.

Summary: EPA expressed continuing concerns about potential impacts to cultural resources.

Dated: March 22, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–5934 Filed 3–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6661–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed March 14, 2005, through March 18, 2005, pursuant to 40 CFR 1506.9.

EIS No. 050110, Draft EIS, AFS, CA, Freds Fire Restoration Project, To Reduce Long-Term Fuel Loading for the Purpose of Reducing Future Fire Severity and Resistance to Control, Eldorado National Forest, El Dorado County, CA, Comment Period Ends: May 9, 2005, Contact: Laura Hierholzer (530) 647–5382.

EIS No. 050111, Draft EIS, AFS, CA, Power Fire Restoration Project, To Reduce Long-Term Fuel Loading for the Purpose of Reducing Future Severity and Resistance to Control, Amador Ranger District, Eldorado National Forest, Amador County, CA, Comment Period Ends: March 9, 2005, Contact: Patricia Ferrell (530) 642–5146.

EIS No. 050112, Final EIS, AFS, WY, Woodrock Project, Proposal for Timber Sale, Travel Management and Watershed Restoration, Implementation, Bighorn National Forest, Tongue Ranger District, Sheridan County, WY, Wait Period Ends: April 25, 2005, Contact: Scott Hill (307) 674–2600.

EIS No. 050113, Draft EIS, BLM, NV, Sloan Canyon National Conservation Area, Resource Management Plan, Implementation, Cities of Las Vegas and Henderson, Clark County, NV, Comment Period Ends: June 23, 2005, Contact: Charles Carroll (702) 515–5291.

EIS No. 050114, Draft EIS, AFS, IN, Hoosier National Forest Land and Resource Management Plan, Implementation, Brown, Crawford, Dubois, Jackson, Lawrence, Martin, Monroe, Orange, Perry Counties, IN, Comment Period Ends: June 23, 2005, Contact: Judi Perez (812) 275–5987.

EIS No. 050115, Final Supplement, NRC, AL, Generic EIS—License Renewal of Nuclear Plants, Joseph M. Farley Nuclear Plants, Units 1 and 2, Supplemental 18 to NUREG–1437 (TAC Nos. MCO768 and MCO769), Houston County, AL, Wait Period Ends: April 25, 2005, Contact: Jack Cushing (301) 415–1424.

EIS No. 050116, Draft EIS, COE, Programmatic—Lower Colorado River Basin Study, Provide Flood Damage Reduction and Ecosystem Restoration, Colorado River, TX, Comment Period Ends: May 9, 2005, Contact: Rob Newman (817) 886–1762.

EIS No. 050117, Draft EIS, BLM, NV, Emigrant Mine Project, Develop and Operate an Open Pit Mine, Construct a Waste Rock Disposal Facility, South of Carlin in Elko County, NV, Comment Period Ends: May 24, 2005, Contact: Tom Schmidt (775) 753–0200.

EIS No. 050118, Draft EIS, AFS, MI, Ottawa National Forest, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Baraga, Gogebic, Houghton, Iron, Marquette and Ontonagan Counties, MI, Comment Period Ends: June 23, 2005, Contact: Robert Brenner (906) 932–1330.

EIS No. 050119, Draft EIS, AFS, OR, Timberline Express Project, To Improve the Winter Recreational Opportunities, Implementation, Zigzag Ranger District, Mt. Hood National Forest, Clackamas County, OR, Comment Period Ends: May 9, 2005, Contact: Gary L. Larsen (503) 668–1700.

EIS No. 050120, Draft Supplement, AFS, CO, Baylor Park Blowdown Project, New Information, Salvage and Treat Down and Damaged Timber, To Reduce Impact of Spruce Beetles, Implementation, White River National Forest, Sopris and Rifle Ranger District, Garfield, Mesa, and Pitkin Counties, CO, Comment Period Ends: May 9, 2005, Contact: Jim Thinnes (970) 945–3201.

EIS No. 050121, Draft EIS, AFS, MT, Northeast Yaak Project, Proposed Harvest To Reduce Fuels in Old Growth, Implementation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Comment Period Ends: May 9, 2005, Contact: Eric Dickinson (406) 295–4693.

EIS No. 050122, Final EIS, DOE, AZ, Sahuarita-Nogales Transmission Line, Construction and Operation of a 345,000-volt (345 kV) Electric Transmission Line across the United

States Border with Mexico, Application for Presidential Permit, Tucson Electric Power (TEP), Nogales, AZ, Wait Period Ends: April 25, 2005, Contact: Dr. Jerry Pell (202) 586–3362.

EIS No. 050123, Final Supplemental, NOA, NC, FL, SC, GA, South Atlantic Shrimp Fishery Management Plan, Amendment 6, Propose To Amend the Bycatch Reduction Device (BRD) Testing Protocol System, South Atlantic Region, Wait Period Ends: April 25, 2005, Contact: Dr. Roy Crabtree (727) 570–5301.

EIS No. 050124, Final Supplement, GSA, MD, U.S. Food and Drug Administration (FDA) Consolidation, Updated and New Information, Constructing a New Eastern Access Road and over Paint Branch, Construct Additional Facilities To Support Expand Program, Relocating the Day Care Center, Federal Research Center at White Oak, Silver Spring, Montgomery County, MD, Wait Period Ends: April 26, 2005, Contact: Shapour Ebadi (301) 595–5156.

EIS No. 050125, Final EIS, NPS, KY, TN, Big South Fork National River and Recreation Area, General Management Plan, Implementation, Resources, Roads and Trails, McCreary, KY and Fentress, Morgan, Pickett and Scott Counties, TN, Wait Period Ends: April 25, 2005, Contact: Reed Detring (423) 569–9778.

EIS No. 050126, Draft EIS, COE, CA, Programmatic—San Luis Obispo Creek Watershed, Waterway Management Plan, Stream Maintenance and Management Plan, City of San Luis Obispo and County of San Luis Obispo, Community of Avila Beach, San Luis Obispo County, Comment Period Ends: Due: July 10, 2005, Contact: Bruce Henderson (805) 585–2145.

EIS No. 050127, Draft EIS, AFS, MI, Hiawatha National Forest, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Alger, Cheboygan, Chippewa, Delta, Luce and Mackinac Counties, MI, Comment Period Ends: June 23, 2005, Contact: Dave Maercklein (906) 786–4062.

Amended Notices

EIS No. 050076, Draft EIS, NOA, ME, RI, CT, Atlantic Large Whale Take Reduction Plan, Proposed Amendments To Implement Specific Gear Modifications for Trap/Pot and Gillnet Fisheries, Broad-Based Gear Modifications, Exclusive Economic Zone (EEZ), ME, CT and RI, Comment Period Ends: May 16, 2005, Contact: Mary Colligan (978) 281–9328.

Revision of **Federal Register** notice published on February 25, 2005: CEQ Comment Period Ending April 26, 2005, has been extended to May 16, 2005.

EIS No. 050105, Draft EIS, AFS, MI, Huron-Manistee National Forests, Proposed Land and Resource Management Plan, Implementation, Several Counties, WI, Comment Period Ends: June 16, 2005, Contact: Jeff Pullen (231) 775–2421.

Revision of **Federal Register** notice published on March 18, 2005: Correction to Title and Comment Period from May 2, 2005, to June 16, 2005.

Dated: March 22, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–5933 Filed 3–24–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the 2005 meetings of the Technological Advisory Council (''Council'') under its charter renewed as of November 19, 2004.

DATES: April 15, 2005 at 10 a.m. to 3 p.m.; July 28, 2005 at 10 a.m. to 3 p.m; and October 27, 2005 at 10 a.m. to 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096 (voice), (202) 418–2989 (TTY), or email: *Jeffery.Goldthorp@fcc.gov.*

SUPPLEMENTARY INFORMATION: Increasing innovation and rapid advances in technology have accelerated changes in the ways that telecommunications services are provided to, and accessed by, users of communications services. The Federal Communications Commission must remain abreast of new developments in technologies and related communications to fulfill its responsibilities under the Communications Act. At the first meeting, on April 15, 2005 under the Council's new charter, the Council will consider the topics of wireless device security and IP network security.

The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is Jeffery.Goldthorp@fcc.gov. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–5929 Filed 3–24–05; 8:45 am]

BILLING CODE 6712–01–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 April 8, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Kenneth D. Klehm, Edmond, Oklahoma; and G. Blake Hogan, Houston, Texas, as trustees for the William M. Cameron 2004 Family Trusts; to retain voting shares of First Fidelity Bancorp, Inc., and thereby indirectly retain voting shares of First Fidelity Bank, National Association, Oklahoma City, Oklahoma.

2. Robert E. Mickey, Jr., Holden, Missouri, individually and as trustee of the Marilyn Mickey Clay 2005 Irrevocable Trust; to acquire voting

shares of F&C Bancorp, Inc., and thereby indirectly acquire voting shares of Farmers and Commercial Bank, Holden, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Rodney A. Abrams, Northbrook, Illinois, the Abrams Family Trust, Stephanie H. Denby, trustee, Buffalo Grove, Illinois; Funeral Financial Services, Ltd., Northfield, Illinois; Mortuary Financial Services, Inc., Richardson, Texas; Richard N. Abrams, Fort Worth Texas; Karen Abrams Fox, Northbrook, Illinois; Jodie Abrams Engfer, North Oaks, Minnesota; and Beverly Adams, Highland Park, Illinois; to acquire voting shares of Surety Capital Corporation, Fort Worth, Texas, and thereby indirectly acquire voting shares of Surety Bank, National Association, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, March 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–5899 Filed 3–24–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Funding Opportunity

AGENCY: Department of Health and Human Services, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice.

Funding Opportunity Title: Announcement of Availability of Funds for Grants for Family Planning Service Delivery Improvement Research.

Announcement Type: This is a standing program announcement to remain in effect through May 15, 2007, unless it is withdrawn or modified, with an annual application receipt date of May 15.

Funding Opportunity Number: PAR–05–185.

CFDA Number: 93.974.

Authority: Section 1004 of the Public Health Service (PHS) Act.

DATES: This standing program announcement will remain in effect through May 15, 2007, unless it is withdrawn or modified. To receive consideration a package containing a signed typewritten application, including the checklist, and two photocopies of the application must be received at the address below no later than May 15 and no earlier than April 15 of each year the program announcement remains in effect. Letters of intent should be received by April 30 of the year in which an application will be submitted. Up to two amended applications may be submitted in years subsequent to the year in which the original grant application was submitted but did not receive funding.

SUMMARY: The Office of Population Affairs (OPA) requests applications for family planning service delivery improvement research grants. Applied research projects are encouraged in one or more of the following priority areas: (1) Quality of care in the delivery of family planning services; (2) effective approaches and interventions for addressing the reproductive health needs of adolescents and incorporating family members (particularly parents or guardians) into decisions of adolescents regarding relationships and sex; (3) reproductive health needs of males, prevention-related decisions by males and appropriate strategies for reaching male clients; (4) knowledge base for incorporating a ''couples'' perspective into the delivery of family planning services; (5) effective organizational approaches for delivery of family planning services in conjunction with related services, particularly HIV prevention services; (6) dissemination of findings and translation of service delivery research into practice; (7) factors associated with increasing costs and the impact of such increasing costs on service delivery; and (8) effectiveness of Title X non-clinical services with regard to information and education activities. Regulations pertaining to grants for research projects are set out at 42 CFR part 52. Section 1008 of the PHS Act provides that ''none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.''

I. Funding Opportunity Description

This announcement invites applications from public and non-profit private entities for research on selected topic areas for family planning service delivery improvement. The purpose is to support relevant research which will promote improvements in family planning services. Therefore, funds available under this announcement are for projects to conduct applied research which will be useful to family planning administrators and providers, researchers, and officials of local, State, and the Federal government, including OPA, in order to improve the delivery of family planning services to persons needing and desiring such services.

Research projects supported under this announcement are expected to be consistent with one or more of the following performance goals for the Family Planning Program in the Department of Health and Human Services: (1) Improve health outcomes, (2) Increase utilization of preventive health care, particularly among vulnerable and special needs populations, (3) Increase the proportion of pregnancies that are intended, or (4) Reduce pregnancies among unmarried adolescent females.

''Healthy People 2010'' is a Department of Health and Human Services initiative to achieve health promotion and disease prevention objectives. Applicants for funding under this announcement should relate proposed plans to Healthy People objectives. A copy of ''Healthy People 2010'' is available at the following Web site location: *http://www.health.gov/healthypeople*

Background

The Family Planning Program, authorized by Title X of the Public Health Service Act (42 U.S.C. 300, *et seq.*) is the only federal program devoted solely to funding family planning and related preventive health care services. This program supports a nationwide network of approximately 4,500 clinics and provides family planning services and supplies as well as relevant preventive health services to approximately 5 million persons per year. Family planning, like many health care services, faces continuing and emerging challenges to delivering quality care. This announcement calling for service delivery improvement research applications is intended to help family planning programs meet those challenges.

The research emphases identified for attention in this announcement are consistent with the purpose of the Title X family planning services program, which is to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants ''to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).''

This announcement also draws on a report issued by OPA in July, 2004: *Future Directions for Family Planning Research: A Framework for Title X Family Service Delivery Improvement Research.* This report was the

culmination of a project that assembled experts to review the existing research literature, discuss the key research issues facing the field and identify future research needed to better inform family planning practitioners. Hard copies of the report are available through the OPA Clearinghouse at P.O. Box 30686, Bethesda, MD 20824–0686; ph: 866–640–PUBS (7827); fax: 866–592–FAXX (3299); e-mail: *clearinghouse@dhhsopa.net*

The experts identified future studies to address three broad concerns: (1) How can high-priority populations be reached? (2) How can family planning practices be strengthened? and (3) How can the organization and administration of services be improved? Based on Family Planning Program priorities, OPA selects and highlights below priority topics for the service delivery improvement research grants program that reflect all three of these concerns.

Purposes of the Grant

The purpose of this grant program is to expand the knowledge base in areas identified for applied research attention in this announcement. To that end, this announcement invites applications in one or more of the following areas:

1. Quality of Care

Quality of care has many components. A report issued by the Institute of Medicine (IOM), *Crossing the Quality Chasm (2001)*, addresses health care in general and calls for attention to six key dimensions of service quality in order to improve service delivery on each dimension:

- Safety—Health care should be safe and should avoid injuries to patients
- Effectiveness—Health care should provide services based on scientific knowledge to all who could benefit from the services and should avoid providing services to those who are unlikely to benefit
- Patient-centeredness—Health care should provide services that are respectful and responsive to individual patient preferences, needs, and values and ensure that patient values guide all clinical decisions.
- Timeliness—Health care should reduce waits and sometimes harmful delays for both those who receive and give care.
- Efficiency—Health care should avoid waste, including waste of equipment, supplies, ideas, and energy.
- Equity—Health care should be provided that does not vary in quality because of personal characteristics such as gender, ethnicity, geographic location, or socioeconomic status.

These quality dimensions are present in health care delivered in family planning clinic settings. Therefore, investigation of approaches which address any of these six dimensions in the family planning context is encouraged. Research that adapts approaches and builds on findings, tools or measures from service quality research in other health care sectors or other countries is similarly encouraged.

2. Reproductive Health Care to Adolescents/Parental Involvement

Adolescents are among the hard-to-reach populations identified for attention in the current Family Planning Program priorities. These program priorities also have the goal of encouraging family participation (particularly that of parents or guardians) in the decision of minors to seek family planning services, including activities that promote positive family relationships. Key issues for the Family Planning Program are: Providing adolescents with information, skills and support to encourage abstinence from or delay of sexual activity. Two significant questions quoted in the *Future Directions* report are: (1) ''What are effective practices that clinics can use to assist adolescents and young adults in sexual decision making?'' and (2) ''How can adolescents be better connected to their families and schools, and will these connections result in decreased sexual activity?'' These perspectives provide a context for the applied research topic of adolescent reproductive health that may be addressed by applicants to this program announcement.

Over the last several years, amid growing concerns about adolescent pregnancy and high rates of sexually transmitted diseases (STDs), local communities have developed abstinence programs. Family planning practitioners can contribute to this wider effort to help teens avoid risky behaviors and make a healthy transition to adulthood, if they are provided with relevant information from service delivery improvement research. Such information will be most useful if it pertains not only to adolescent clients, but also to the parents who have such a critical role in shaping their child's development.

There is interest in a range of studies that might be designed to develop useful approaches and evaluate tailored interventions in this area. Intervention studies that target parental involvement are of particular interest.

Possible studies include:

- Identification of effective clinic techniques for counseling and encouraging adolescent abstinence, return to abstinence, or similarly-responsible decision making regarding sexual behavior, including training for adolescents in needed skills to behaviorally carry out their decisions;
- Evaluation of abstinence programs in the family planning setting which teach abstinence knowledge, attitudes and skills in the context of preparation for future healthy family relationships;
- Evaluation of clinic strategies for promoting parent-adolescent communication about preparation for future family life through current decision-making about reproductive health matters;
- Identification of approaches to enhance the role of parents in providing information to their adolescents about sex;
- Evaluation of various kinds of outreach strategies to parents by family planning providers; and
- Evaluation of youth advocate strategies for supporting/guiding adolescents and their families in navigation of the reproductive health care system.

3. Reproductive Health Services to Males

Males also are among the hard-to-reach populations identified for attention in the current priorities of the Family Planning Program. Although men play a vital role in decision-making around sexual relationships, reproductive health, and family planning, most of the attention in the past has been focused on women. A fundamental building block in the development of any program is understanding the population to be served. While we have learned much about program interventions directed at women, little is known about how to deliver reproductive health services to men. The lack of information about the knowledge, attitudes, and behavior of males regarding family planning and related preventive health needs has made it difficult to design programs that appropriately serve males.

Priority questions about males raised by the *Future Directions* report include: ''What information do we need about men in their early 20s and 30s who need STD and family planning services? How do we create more male clinics? How do we look for alternative sites for these clinics?'

In order to advance our understanding in this area, research is encouraged on one or more of the following topics:

- Information about the characteristics of men who seek reproductive health services, their pattern of use, awareness of the

availability of family planning services, and intention to use such services.

- Men's experiences with the existing reproductive health care system and factors influencing or inhibiting men's use of provided services.
- Services valued by males of different age groups and their preferred context for such services, *e.g.*, couples; male-only; traditional family planning clinic setting or other contexts, etc.
- Evaluation of outreach strategies and approaches to males by family planning clinics.
- Factors that influence prevention-related choices of males such as abstinence, return to abstinence, committed marital/monogamous relationships, or use of a condom when engaging in widespread sexual activity.

For the first time, data on males were obtained in the National Survey of Family Growth which was in the field in 2002 (Cycle 6). Please see fuller description of this data set under ''Data Resources'' section below. This new cycle provides an opportunity to explore male reproductive health characteristics and motivations that could improve our understanding of how best to meet the reproductive health needs of men.

4. Family Planning Services to Couples

While reproductive and family planning choices likely represent a joint decision between couples, scant attention has been given to couple-focused approaches for reproductive health care. The *Future Directions* report indicates that the development and testing of approaches to serving couples in the family planning setting is a promising new area of research, given that most sexual, contraceptive, and childbearing decisions are made jointly. It also points out that there is emerging policy interest at the Federal level in enhancing the quality of relationships between intimate partners to encourage the establishment of healthy committed relationships and marriages. Some evidence indicates that the involvement of partners in reproductive health care could result in more effective use of contraceptives. Cooperation of partners is also key for the effectiveness of natural family planning. Providers oriented toward meeting the needs of couples would find results of partners research useful. There is a heightened need to focus on how couples communicate regarding the use of condoms for disease protection. Given the complex dynamics that may be present in sexual relationships, women particularly may be in need of assistance from the family planning counseling context in order to conduct couples negotiations.

Thus, there are a number of ways to approach the building of a knowledge base for incorporating a ''couples'' perspective into the delivery of family planning services. There is a research literature on the role that the couple relationship plays in contraceptive decision-making, which could be usefully expanded. Almost completely unexplored is the topic of how healthy couple relationships could be fostered in family planning settings or through referral to appropriate care services such as family services or marriage and relationship education services. The goal of such care would be to benefit the health of the individual members of the couple as well as the couple unit. Overall, studies are encouraged which investigate innovative approaches for serving couples in family planning clinics or through coordination of complimentary care settings, as well as studies which evaluate strategies for involving the partner in effective reproductive health decision-making.

5. Organizational Approaches to Integrated Services

Although integrated services can take many forms, this announcement directs particular attention to the integration of HIV prevention and family planning services. The *Future Directions* report indicates that research about how to integrate successfully these two types of reproductive health services is very limited and should be given the highest priority.

Family planning clinics are an ideal site for integrating HIV prevention activities because they serve sexually active, nonpregnant women, many of whom may be at great risk of becoming infected. The increased incidence of HIV infection among women, especially those whose demographic characteristics match those of the women served in publicly-funded family planning clinics, underscores the need for the Title X program to intensify efforts to provide both education and counseling regarding HIV/AIDS to users of Title X services. These important prevention considerations have made integration of early HIV prevention programs into ongoing family planning services a major public health imperative.

Studies are needed to examine the impact on the family planning service delivery system of such HIV prevention service integration. In what ways does this development impinge on the concerns and routine functioning of family planning clinics and clinic personnel? In addition to assessing what HIV-related activities have been implemented, studies are needed to determine which strategies have been effective, and to disseminate information about successful integration approaches being implemented in the family planning setting.

6. Translating Research into Practice (TRIP)

There is an increasing need for the worlds of research and practice to be in closer relationship for the mutual benefit of each. In the purely medical context, the practice of medicine is becoming increasingly evidence-based, with practice guidelines for clinicians driven by research findings about treatment effectiveness. For health-related programs with an expanded mission beyond the strictly medical, interventions and service practices are increasingly based on the best available evidence regarding what works. Like the rest of the health care system, family planning faces the challenge of utilizing practice guidelines and recommendations that are evidence-based in the delivery of clinical services and of translating knowledge into practice more generally.

Dissemination research is a first step in meeting this challenge, especially research that identifies effective strategies for disseminating tested practice innovations to the practitioner field. Areas that need exploration include: Descriptive research about where family planning practitioners actually obtain information utilized in the service delivery arena; professional-organization collaboration in conducting research about practices; and evaluations of dissemination interventions.

Of additional interest to OPA are implementation studies that provide needed details about how a given service innovation can be effectively implemented elsewhere or how a more general research finding can be given concrete expression in the service setting, using appropriately-selected ''translational'' clinic sites. The service innovation or research finding may initially emanate from other than family planning settings or populations, provided the proposed study bases the translation/implementation effort on sound theoretical constructs regarding transferability. For example, the applicability of findings about the utility of information technology to increase efficiency and effectiveness of medical and social services other than family planning may be explored in an implementation study utilizing a family planning clinic site.

7. Increasing Costs and Their Impact

Research is needed that would shed light on a number of unanswered questions related to costs including:

- How are costs affected by different types of services, the characteristics of the clients served and the setting where services are provided?
- What strategies have been employed to reduce costs while still maintaining the quality of services provided?
- What impact has the newer, more technologically advanced methods of care had on the ability to maintain the quality and level of services?

Areas of interest include, but are not limited to the following:

- The increasing cost of providing specific contraceptive methods, including the actual cost of the method(s), shifts in the demand for the method(s), and staff level and time required;
- The cost of using advanced diagnostics technologies, including the actual cost of the technology, staff level and time required, and the long range cost implications to the provider of adopting the technology;
- The cost of providing services to under-served population(s), including outreach efforts and the specific mix of services required;
- The cost involved in recruiting and retaining adequate numbers of qualified staff; and
- Factors affecting revenue, including increases in the number of clients requiring subsidized services, changes in third party reimbursement to providers, and shifts in Federal, State, and local funding sources.

8. Effectiveness of Title X Information and Education Activities

Promoting individual and community health is a Family Planning Program priority. Increasingly, information and education strategies have been employed by family planning practitioners to accomplish this goal. There is a need for corresponding evaluations of the effectiveness of such efforts.

A great diversity of information strategies and educational approaches have been employed by family planning practitioners. A number of OPA-funded projects provide family planning information and education services to many individuals in non-clinical and non-traditional settings. Not only has it been difficult to track thousands of non-medical users being served throughout the country by these Title X information and education projects, but it also presents a challenge to evaluate the effectiveness of these approaches. Therefore, rigorous evaluations of these activities, utilizing appropriate methodologies, is encouraged in this program announcement.

Data Resources

When appropriate to the proposed topics, applicants may wish to consider using nationally-representative data sets such as the National Survey of Family Growth (NSFG). The NSFG is a cross-sectional survey of family formation and reproductive health conducted by the National Center for Health Statistics, Centers for Disease Control and Prevention. Previous cycles have consisted of personal interviews with a national sample of women 15–44 years of age in the United States, but with the latest cycle, Cycle 6, data from men ages 15–49 were also collected. The NSFG is a source of national data, which provides information on the level of sexual activity among adolescents, incidence of unintended pregnancy, contraceptive behavior, use of family planning services, trends in marriage, divorce, and cohabitation and rates of infertility. More information on the NSFG is available at *http://www.cdc.gov/nchs/nsfg.htm* OPA encourages applications which utilize data from Cycle 6 of the NSFG, as appropriate to the particular research approach. However, whether this type of data set is used or not used is completely at the discretion of the applicant and will not influence funding decisions on applications submitted under this announcement.

II. Award Information

The OPA, subject to the availability of funds, intends to make available approximately $750,000 each year (Fiscal Years 2005, 2006 and 2007) to support an estimated three to four new research projects in each of the three years. Awards will range from $150,000 to $200,000 in total costs (both direct and indirect costs) per year. The awards to be made are for applied research and do not cover costs of delivering services that the applied research project may propose to evaluate. Accordingly, the mechanism of support for this program announcement will generally be the research project grant (R01), although other mechanisms may be supported.

Research applications requesting less than $150,000 in total costs (both direct and indirect costs) per year for no more than a total of two years will be considered small research project grants (R03). Small research project grants (R03) will be subject to the review criteria listed in the ''Application Review Information'' section below, but reviewers will be instructed to take into account the smaller scope of the proposed project.

OPA encourages New Investigators (as defined in the PHS 398 application instructions) to apply as Principal Investigators. New Investigator applications (whatever the funding level request) will be evaluated by the review criteria listed in the ''Application Review Information'' section below, but the reviewers will be instructed to take into account the Principal Investigator's stage of career development.

Grants will be funded in annual increments (budget periods) and may be approved for a project period of up to three years. Funding for all budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

Earliest anticipated start date: Four months after application receipt date.

III. Eligibility Information

1. Eligible Applicants

Any public or private nonprofit entity located in a State (which includes one of the 50 United States or the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a grant under this announcement. Faith-based organizations are eligible to apply for these service delivery improvement research grants.

2. Cost Sharing or Matching

There is no cost sharing or matching requirement.

IV. Application and Submission Information

1. Address to Request Application Package

Applications must be submitted on the research application form PHS 398 (revised 9/04), which is available online at: *http://grants1.nih.gov/grants/oer.htm.* This form contains instructions for the submission of amended as well as new grant applications. For additional information about obtaining the research application form PHS 398, please call Eugenia Eckard at (301) 594–4001.

2. Content and Form of Application Submission

Applicants are encouraged to read all PHS Form 398 instructions prior to preparing an application in response to

this announcement. The instructions given are a useful guide to application preparation. Pay close attention to font size, page limits, and other format specifications. However, OPA is not using the Modular Grant Application and Award Process. Applicants for OPA funding should ignore instructions concerning the Modular Grant Application and Award Process, following budget instructions otherwise provided in PHS Form 398.

When submitting the application check ''yes'' in Block 2 of the face page, and provide PAR–05–185 for the number and ''Family Planning Service Delivery Improvement (SDI) Research'' as the title.

The application content should include the following:

(1) A well-organized statement of the applied research problem to be addressed;

(2) a detailed description of the research project design;

(3) the conceptual framework within which the design has been developed;

(4) the methodology to be employed;

(5) the evidence upon which the analysis will rely; and

(6) the manner in which the evidence will be analyzed.

Applications should also clearly address how findings from the proposed study will have general applicability to the improvement of the delivery of family planning services, and a plan should be presented on how information from the research findings will be disseminated.

3. Submission Dates and Times

To receive consideration, applications must be received by the Center for Scientific Review, NIH, by the deadline listed in the **DATES** section of this announcement. Applications submitted via U.S. Postal Service will be considered as meeting the deadline if they are postmarked no later than 1 week prior to the deadline date given in the **DATES** section. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. As soon as possible after the receipt date, usually within 6 weeks, the principal investigator/program director and the applicant organization will receive by electronic notification the application assignment number and the name, address, and telephone number of the Scientific Review Administrator (SRA) who will be directing the review group to which the application has been assigned. The SRA is located at the Agency for Healthcare Research and Quality (AHRQ) which is serving as the review organization for these applications. Applications that do not meet the deadline will not be accepted for review, and will be returned. Applications sent via facsimile or by electronic mail will not be accepted for review.

The application package must be submitted to: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1040–MSC 7710, Bethesda, MD 29892–7710 (20817 for express/courier service).

Prospective applicants are asked to submit a letter of intent that includes a descriptive title of the proposed research, the name, address, and telephone number of the Principal Investigator, and the title of this program announcement. Although a letter of intent is not required, is not binding, and does not enter into the review of a subsequent application, the information that it contains allows OPA staff to estimate the potential review workload and plan the review. The letter of intent should be sent to Eugenia Eckard, at the address listed under the ''Agency Contacts'' section below and received by the date indicated in the **DATES** section of this announcement.

Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the OPA Web site at: *http://opa.osophs.dhhs.gov/duns.html.*

4. Intergovernmental Review

This program is not subject to the review requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

The allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged to grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

The Title X program is intended to address the health needs of all men and women, including all subgroups as characterized by age, class, race, and ethnicity. It is the policy of OPA that women and members of minority groups be included in all OPA supported research projects unless a clear and compelling rationale or justification establishes that such inclusion is inappropriate. Applicants should approach their research and analysis with considerations of class, race, and ethnicity in mind whenever possible.

V. Application Review Information

1. Technical Review Criteria

Eligible applications will be reviewed by a panel of independent peer reviewers and assessed according to the following technical merit criteria:

(1) *Significance.* If the aims of the project are achieved, how much will applied research knowledge be advanced? Does the project employ novel or creative concepts, approaches, or methods that are insightful and likely to move forward the applied research area addressed in the application?

(2) *Scientific Merit.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project?

(3) *Feasibility and Likelihood of Producing Meaningful Results.* Are the plans for organizing and carrying out the project, including the responsibilities of key staff, the time line, and the proposed project period, adequately specified and appropriate? Does the application acknowledge potential problem areas and consider alternative tactics? For intervention evaluation studies, is adequate funding for the intervention already in place or assured for the intervention period to be evaluated, making the proposed evaluation feasible?

(4) *Competency of Staff.* Are the principal investigator, and other key research staff, appropriately trained and well suited to carry out this project?

(5) *Adequacy of Facilities and Resources.* Are the facilities and resources of the applicant institution and other study sites adequate?

(6) *Adequacy of Budget.* Is the budget reasonable and adequate in relation to the proposed project?

2. Review and Selection Process

Each of the above technical review criteria will be addressed and considered by independent peer reviewers in assigning an overall or global priority score, using a score range from 1.0 to 5.0 (with 1.0 indicating

highest priority and 5.0, lowest priority). Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs (DASPA) on the basis of priority score, program relevance, and the availability of funds.

VI. Award Administration Information

1. Notification of Award

The OPA does not release information about individual applications during the review process. When a final funding decision has been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies the amount of money awarded, the purpose of the grant, the length of the project period, and the terms and conditions of the award.

2. Administrative and National Policy Requirements

In accepting this award, the recipient stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

A Notice providing information and guidance regarding the ''Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs'' was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grant recipients and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

3. Reporting Requirement

At the completion of the project, the grant recipient must submit a brief summary in 2,500 to 4,000 words, written in non-scientific (laymen's) terms and Financial Status Report (SF–269). The narrative should highlight the findings and their implications for improving family planning service delivery. A plan for disseminating research findings should accompany the narrative. This plan should indicate how products of the research will be made accessible to the Office of Population Affairs, as well as to the Title X family planning administrators and practitioners, researchers, and State and local policy-makers. The summary, plan, and Financial Status Report must be mailed to the Grants Management Specialist identified on the Notice of Grant Award within 90 days of the project's completion.

VII. Agency Contacts

For information on specific research or program requirements, contact Eugenia Eckard, Office of Population Affairs, 1101 Wootton Parkway, Suite 700 Rockville, MD 20852, (301) 594–4001, or via e-mail at *eeckard@osophs.dhhs.gov*. For assistance on administrative and budgetary requirements, contact the OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, MD, (301) 594–0758, or via e-mail at *kcampbell@osophs.dhhs.gov*.

Dated: March 21, 2005.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 05–5945 Filed 3–24–05; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Protection of Human Subjects, Proposed Criteria for Determinations of Equivalent Protection

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Office of Public Health and Science, Department of Health and Human Services (HHS) solicits public comment on criteria that have been recommended to the Office for Human Research Protections (OHRP) for making determinations of whether procedures prescribed by institutions outside the United States afford protections that are at least equivalent to those provided in the Federal Policy for the Protection of Human Subjects (codified by HHS as 45 CFR part 46, subpart A, and equivalent regulations of 14 Departments and Agencies, collectively referred to as the Federal Policy or the Common Rule).

DATES: Submit written or electronic comments on the recommended criteria for making determinations of equivalent protection on or before May 24, 2005.

ADDRESSES: Submit written comments to Ms. Gail Carter, Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–4521 (not a toll-free number). Comments also may be sent via facsimile to (301) 402–0527 or by e-mail to: *EQFRN@osophs.dhhs.gov.*

FOR FURTHER INFORMATION CONTACT: Glen Drew, Office for Human Research Protections, Office of Public Health and Science, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, (301) 402–4994, facsimile (301) 402–2071; e-mail: *gdrew@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The HHS codification of the Federal Policy states at 45 CFR 46.101(h):

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a Department or Agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the Department or Agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the Department or Agency head, notices of these actions as they occur will be published in the **Federal Register** or will be otherwise published as provided in Department or Agency procedures.

No formal findings of equivalent protection have been published in the **Federal Register** since the Federal policy was finalized in June, 1991. Use of the authority provided by 45 CFR 46.101(h) has been advocated by various parties, including the National Bioethics Advisory Commission in its April, 2001 report ''Ethical and Policy Issues in International Research: Clinical Trials in Developing Countries,'' and the HHS Inspector General in the September, 2001 Report ''The Globalization of Clinical Trials: A Growing Challenge in Protecting Human Subjects.'' The authority of the Secretary of Health and Human Services has been delegated to OHRP (68 FR 60392), and in considering use of the 45 CFR 46.101(h) authority, OHRP recognized a need for using consistent criteria as a basis for decisions regarding equivalent protections. During 2002, the OHRP Director established a working group of representatives from interested HHS agencies, with staff support from OHRP, to consider potential criteria for use in making such decisions. The working group delivered its report in July 2003. That report recommends a framework

for implementing the existing regulatory authority of 45 CFR 46.101(h). The full working group report recommends the approach and criteria described in this notice and is available at *http://www.hhs.gov/ohrp/international/EPWGReport2003.pdf* and the appendix table is available at *http://www.hhs.gov/ohrp/international/FPGWFramework.pdf,* or by request to either of the addresses given above.

II. Request for Comments

OHRP has solicited and considered comments from the other agencies that have adopted the Federal Policy, and now solicits public comment on the working group's recommended criteria for making determinations whether procedures prescribed by institutions outside the United States provide protections that are at least equivalent to those provided by the Federal Policy. OHRP will consider all public comments in deciding whether, and if so how, to proceed with implementing the authority under 45 CFR 46.101(h). Draft guidance describing OHRP's proposed method of implementing this authority would be published for public comment before OHRP would issue final guidance on this topic.

OHRP neither endorses nor rejects the content, conclusions, or recommendations in the working group's report, but particularly solicits public comment on several questions related to the approach and criteria recommended in the report:

1. Is the recommended approach appropriate for implementing the authority under 45 CFR 46.101(h)?

1.a. Is it preferable to make determinations of equivalent protections on the basis of submissions by individual institutions or on the basis of national or international procedural standards that may be relied upon by multiple institutions without repeated assessments?

2. Could an alternative approach provide equal or greater effectiveness and efficiency for implementation of this authority?

2.a. If so, what approach and why would effectiveness or efficiency be improved?

3. Do the recommended criteria appropriately and adequately describe the protections provided to human subjects by the Federal Policy?

3.a. Do the regulatory provisions the working group cited as contributing to particular protections provided by the Federal Policy relate directly to those protections? (See Table 1.)

3.b. Should other regulatory provisions be cited as relating to particular protections?

3.c. What, if any, alterations or additions to the proposed criteria would be helpful in assessing whether procedures followed in foreign countries provide protections at least equivalent to those provided by the Federal Policy?

4. Is the procedure recommended by the working group for seeking a finding of equivalent protections under 45 CFR 46.101(h) appropriate?

III. Framework Proposed in Working Group Report

The working group report concluded that

> The primary focus of the U.S. policy is the accountability of the research institution for the welfare and rights of human subjects. The overarching goal of the specific accountability mechanisms and procedures described in the policy is to establish expectations of ethical conduct within the research institution. The responsibility for achieving these aims is shared by the institution, the Institutional Review Board (IRB), or Research Ethics Committee (REC), and the relevant U.S. Agency or Department head. Although investigators are critical actors in achieving these goals, the policy provides very little explicit guidance to investigators and therefore suggests that the protection of human subjects depends largely on the proper promotion and conscientious execution of standard practices and procedures, including those related to research ethics review, within the institution.

The working group proposed an approach to equivalent protections that involves five separate steps, the first of which is to identify the specific protections provided by 45 CFR part 46 subpart A, followed by three steps of determining the equivalence of the protections offered by the set of procedures employed in foreign research institutions, and the fifth step is to provide an assurance that these procedures will be followed within the institution.

Steps in determining equivalence.

(1) Articulation of the specific protections embodied in 45 CFR part 46 subpart A.

(2) Assessment of the protections provided by the institution's procedures.

(3) Comparison of the protections provided by the institution's procedures with those provided by 45 CFR part 46 subpart A and determination whether or not the institution's procedures provide at least equivalent protections.

(4) Approval of the relevant department or agency head for the substitution of the institutional procedures in lieu of the procedures of 45 CFR part 46 subpart A.

Mechanism of assurance with OHRP.

(5) Assurance from the institution that the substituted procedures will be followed in the conduct of human subjects research funded by HHS. The assurance will be completed and filed with OHRP.

The working group identified 7 specific protections afforded by 45 CFR part 46 subpart A that it recommended be included in the determination of equivalence:

Establish norms of ethical conduct and due diligence in review and performance of research within the institution;

Ensure adequate authority and independence of the IRB/Research Ethics Committee;

Protect against biased decision making and arbitrary decisions in research ethics review;

Ensure sufficient quality and comprehensiveness of research ethics review;

Ensure research ethics review and oversight are commensurate with risks to research subjects and vulnerability of the study population;

Protect against unnecessary or unjustified risk throughout the course of the study; and

Ensure voluntary participation after adequate disclosure of information related to the study.

The working group concluded that each of these protections is necessary for a determination of equivalent protections. It also concluded that each protection may be achieved in a number of different ways, including the use of procedures that differ from those provided in 45 CFR part 46 subpart A. In making determinations of equivalence, the working group recommended that OHRP assess whether the procedures employed by the foreign institution are able to satisfy each of these protections individually and in the aggregate.

The working group also recommended that, based on a recommendation from OHRP following a comparison of the protections provided by the institution's procedures and 45 CFR part 46 subpart A, the Secretary of HHS may find that the institution's procedures provide at least equivalent protections and approve the substitution of these procedures in lieu of those of 45 CFR part 46 subpart A. The working group concluded that a determination of equivalent protections does not affect OHRP's oversight authority for HHS funded research conducted within the institution. The working group considered the authority of OHRP to conduct on-going assessment of the equivalence of the institution's procedures and protections to be a protection implied in 45 CFR part 46 subpart A, though not part of the

assessment of the protections provided by an institution's procedures.

Similarly, the substitution of the institution's procedures in lieu of those of 45 CFR part 46 subpart A does not obviate the need for the institution to enter into an assurance with OHRP that the procedures will be followed by the institution in the conduct of HHS funded research. An assurance is a legal promise to comply with certain conditions attached to the provision of U.S. federal research funding.

To show the relationship between the Federal Policy and each of the seven protections the working group discerned in the Federal Policy, it developed a table matching the protections with provisions of 45 CFR part 46 subpart A that contribute to each of the protections. The center column of the table provides examples of procedures that the working group thought institutions might use to provide the protection related to those regulatory provisions. The table appears below.

Appendix

TABLE 1.—FRAMEWORK FOR EQUIVALENT PROTECTIONS

Specific protection	Example procedures	45 CFR part 46 subpart A authority
INSTITUTIONAL RESPONSIBILITIES		
Establish norms of ethical conduct and due diligence in review and performance of research within the institution.	—Institutional statement of principles. —Procedures for review ..... —Procedures for reporting to Research Ethics Committee (REC). —Procedures for REC record keeping. —Statement of investigator responsibilities. —Effective dissemination of REC submission procedures. —Investigator training	46.103(a); 46.103 (f) Establish and satisfy terms of assurance. 46.103(b)(1) Develop or adopt statement of principles governing institution's human subjects protections responsibilities. 46.103(b)(4) Ensure initial and continuing review of research; determine necessary frequency of review for each study; determine where external verification is necessary that no material changes have occurred since last IRB review; establish procedures for IRB reporting of findings and actions to institution and investigator(s). 46.103(b)(5) Establish and 46.108 (a) follow written procedures for prompt reporting to IRB and Institutional officials of: —Unanticipated problems involving risk to subjects or others, or noncompliance with the policy; —Suspension or termination of IRB approval. 46.103(b)(4) Ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject. 46.103(b)(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Department or Agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and (ii) any suspension or termination of IRB approval. 46.115 An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities. The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the Department or Agency at reasonable times and in a reasonable manner.
Ensure adequate authority, and independence of IRB.	—Documentation of REC authority	46.109(a); 46.109 (e) grant and ensure necessary authority for IRB, including: discretion to review, approve, require modifications, or disapprove research activities; increase information for informed consent, observe, or have third party observe consent process and research. 46.112 Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB. 46.113 An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. 46.110(b) Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § 46.108(b).

TABLE 1.—FRAMEWORK FOR EQUIVALENT PROTECTIONS—Continued

Specific protection	Example procedures	45 CFR part 46 subpart A authority
	—REC member(s) unaffiliated with the institution.	46.107(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.
Research Ethics Committee (REC) Responsibilities		
Appropriate Scope and Quality of Review:		
Protect against biased decision making and arbitrary decisions in research ethics review.	—Public accessibility of REC membership and affiliation within institution.	46.103(b)3 A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations. Disclosure of any employment or other relationship between each [IRB] member and the institution. 46.107(a) IRB membership. (see 45 CFR 46 for specific criteria). 46.107(b) Gender balance.
	—Institutional policy on REC conflict of interest.	46.107(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.
	—REC membership to reflect: independence, unaffiliated member(s).	46.107(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution. 46.107(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.
Ensure sufficient quality and comprehensiveness of review.	—REC membership to reflect competence, comprehensiveness of review; adequate expertise for study population; diversity of representation; gender balance.	46.107(b) Gender balance. 46.107(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas. 46.107(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution. 46.107(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB. 46.108(b) Except when an expedited review procedure is used (see § 46.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.
Ensure research ethics review and oversight are commensurate with risks to research subjects and vulnerability of the study population.	—Procedures for continuing review and monitoring commensurate with risk. —Procedures for evaluating risk and benefit. Procedures for reviewing selection of subjects and safeguards provided. —Procedures for IRB reporting to investigators.	46.109(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research. 46.110(b) Expedited Review. 46.111(a)(2) In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility. 46.111(a)(3) Selection of subjects as equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons. 46.113 Any suspension or termination or approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the Department or Agency head.

TABLE 1.—FRAMEWORK FOR EQUIVALENT PROTECTIONS—Continued

Specific protection	Example procedures	45 CFR part 46 subpart A authority
Protect against unnecessary or unjustified risk throughout the course of the study.	—REC membership policy reflects adequate expertise and experience.	46.107(a) If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.
	—Policy has provisions for supplementing expertise, experience and disciplinary perspective as required.	46.111(a)(1) Risks to subjects are minimized: (i) by using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risks, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes. 46.111(a)(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result.
	—Procedures for review of minimization of risk.	46.111(a)(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.
	—Procedures for reviewing selection of subjects and safeguards provided.	46.111(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects. 46.111(a)(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.
	—Procedures for continued oversight and monitoring.	46.109(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.
Ensure voluntary participation after adequate disclosure of information related to the study.	—Policies on obtaining verifiable informed consent.	46.116 Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. 46.111(a)(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § 46.116. 46.111(a)(5) Informed consent process will be appropriately documented, in accordance with, and to the extent required by § 46.117. 46.116 The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. 46.117(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative.
	—Policies on types of information to be disclosed in the informed consent process.	46.109(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 46.116. The IRB may require that information, in addition to that specifically mentioned in § 46.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects. 46.109(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § 46.117. 46.109(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

TABLE 1.—FRAMEWORK FOR EQUIVALENT PROTECTIONS—Continued

Specific protection	Example procedures	45 CFR part 46 subpart A authority
		46.111(a)(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § 46.116. 46.116(a)(1–8) Necessary elements of disclosure. 46.116(b)(1–6) Necessary elements of disclosure. 46.116(c)(1–2) Waiver of informed consent. 46.116(d)(1–4) Approval of alternate consent procedures or waiver. 46.117(a) Written informed consent.

Bernard A. Schwetz,

Director, Office for Human Research Protections.

[FR Doc. 05–5947 Filed 3–24–05; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Chronic Disease Prevention and Health Promotion

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following meeting.

Name: Interagency Committee on Smoking and Health.

Time and Date: 9 a.m.–4:30 p.m., April 13, 2005.

Place: Omni Shoreham Hotel, Hampton Ballroom, 2500 Calvert Street, NW., Washington, DC 20008. Telephone: 202–234–0700.

Status: Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 e.s.t. on April 4, 2005.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the (a) coordination of all research and education programs and other activities within the Department and with other Federal, State, local and private agencies and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local public health agencies with respect to smoking and health activities.

Matters to be Discussed: The agenda will focus on addressing the Global Tobacco Epidemic.

For Further Information Contact: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet at *http://www.cdc.gov/tobacco* in mid-May or from Ms. Monica L. Swann, Management and Program Analyst, Office on Smoking and Health, 200 Independence Avenue, SW., Suite 317B, Washington, DC 20201, (202) 205–8500.

Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 18, 2005.

Alvin Hall,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. 05–5913 Filed 3–24–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.–5:30 p.m., May 12, 2005. 8:30 a.m.–2 p.m., May 13, 2005.

Place: CDC, Auditorium B, Building 1, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters To Be Discussed: Agenda items will include:

1. Opening Session: NCID Update.
2. Futures Initiative Update.
3. Environmental Microbiology.
4. Development of CDC Research Agenda.
5. Veterinary-Human Public Health Interface.
6. Global Disease Detection Initiative.
7. Topic Updates.
   a. Influenza.
   b. Chronic Wasting Disease.
   c. Quarantine Update.
8. Board meets with Director, CDC.

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board December 2004; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Tony Johnson, Office of the Director, NCID, CDC, Mailstop E–51, 1600 Clifton Road, NE., Atlanta, Georgia 30333, e-mail *tjohnson3@cdc.gov*; telephone 404/498–3249.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 18, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–5909 Filed 3–24–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2211–N]

Medicare, Medicaid, and CLIA Programs; Continuance of the Approval of the American Society for Histocompatibility and Immunogenetics as a CLIA Acreditation Organization

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the re-approval of the American Society for Histocompatibility and Immunogenetics (ASHI) as an accrediting organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have determined that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by ASHI meet the conditions required by Federal law and regulations. Consequently, laboratories that are voluntarily accredited by ASHI and continue to meet the ASHI requirements will be deemed to meet the CLIA condition-level requirements for laboratories and therefore are not subject to routine inspection by State survey agencies to determine their compliance with Federal requirements. They are, however, subject to validation and complaint investigation surveys conducted by us or our designee.

DATES: *Effective Date:* This notice is effective on March 25, 2005. It will remain in effect for 6 years.

FOR FURTHER INFORMATION CONTACT: Minnie Christian, (410) 786–3339.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Pub. L. 100–578. CLIA replaced in its entirety section 353(e)(2) of the Public Health Service Act, as enacted by the Clinical Laboratories Improvement Act of 1967. We issued a final rule implementing the accreditation provisions of CLIA on July 31, 1992 (57 FR 33992). Under the CLIA program, we may approve a private, nonprofit organization as an approved accreditation organization to accredit clinical laboratories if the organization meets certain requirements. An organization's requirements for accredited laboratories must be equal to, or more stringent than, the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). The regulations listed in subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specify the requirements an organization must meet to be an approved accreditation organization. We approve an accreditation organization for a period not to exceed 6 years.

In general, the approved accreditation organization must:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by us.
- Apply standards and criteria that are equal to or more stringent than those condition-level requirements established by us.
- Assure that laboratories accredited by the accreditation organization continually meet these standards and criteria.
- Provide us with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked within 30 days of the action taken.
- Notify us at least 30 days before implementing any proposed change in its standards.
- If we withdraw our approval, notify the accredited laboratories of the withdrawal within 10 days of the withdrawal.

CLIA requires that we perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization as well as by any other means that we determine to be appropriate.

II. Notice of Continued Approval of ASHI as an Accreditation Organization

In this notice, we approve ASHI as an organization that may continue to accredit laboratories for purposes of establishing their compliance with CLIA requirements. We have examined the ASHI application and all subsequent submissions to determine equivalency with our requirements under subpart E of part 493 that an accreditation organization must meet to be approved under CLIA. We have determined that ASHI complied with the applicable CLIA requirements and grant ASHI approval as an accreditation organization under subpart E, for the period stated in the ''Effective Date'' section of this notice, for the following specialty and subspecialty areas:

- Histocompatibility.
- ABO/Rh typing.

As a result of this determination, any laboratory that is accredited by ASHI during the effective time period for an approved specialty or subspecialty listed above is deemed to meet the CLIA requirements for laboratories found in part 493 of our regulations and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by us, or by any other validly authorized agent.

III. Evaluation of the ASHI Request for Approval as an Accreditation Organization Under CLIA

The following describes the process used to determine that the ASHI provides reasonable assurance that laboratories it accredits will meet the applicable requirements of CLIA.

The ASHI formally reapplied to us for approval as an accreditation organization under CLIA for the specialty of Histocompatibility and the subspecialty of ABO/Rh. We evaluated the ASHI application to determine compliance with our implementing and enforcement regulations, and the deeming/exemption requirements of the CLIA rules.

We verified the ASHI's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

The ASHI submitted the specialty and subspecialty that it would accredit; a comparison of individual accreditation and condition-level requirements; a description of its inspection process; proficiency testing (PT) monitoring process; its data management and analysis system; a listing of the size, composition, education and experience of its inspection teams; its investigative and complaint response procedures; its notification agreements with us; its removal or withdrawal of laboratory accreditation procedures; its current list of accredited laboratories; and its announced or unannounced inspection process.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing

The ASHI's requirements are equal to or more stringent than the CLIA requirements at § 493.801 through § 493.865.

For the specialty of Histocompatibility, ASHI requires participation in at least one external PT program, if available, in histocompatibility testing with an 80 percent score required for successful participation and enhanced PT for laboratories that fail an event. The CLIA regulations do not contain a requirement for external PT for the speciciality of Histocompatibility.

Subpart J—Facility Administration for Nonwaived Testing

The ASHI requirements are equal to or more stringent than the CLIA

requirements at § 493.1100 through § 493.1105.

Subpart K—Quality System for Nonwaived Testing

The ASHI requirements are equal to or more stringent than the CLIA requirements at § 493.1200 through § 493.1299. For instance, ASHI's control procedure requirements for the test procedures Nucleic Acid Testing and Flow Cytometry are more specific and detailed than the CLIA language for requirements for control procedures. Sections 493.1256(c)(1) and (c)(2) require control materials that will detect immediate errors and monitor accuracy and precision of test performance that may be caused by test system failures, environmental conditions and variance in operator performance. ASHI standards provide detailed, specific requirements for the control materials to be used to meet these CLIA requirements.

Subpart M—Personnel for Nonwaived Testing

We have determined that ASHI requirements are equal to or more stringent than the CLIA requirements at § 493.1403 through § 493.1495 for laboratories that perform moderate and high complexity testing. Experience requirements for Director, Technical Supervisor, and General Supervisor exceed CLIA's personnel experience requirements in the specialty of Histocompatibility.

Subpart Q—Inspections

We have determined that the ASHI requirements are equal to or more stringent than the CLIA requirements at § 493.1771 through § 493.1780. The ASHI inspections are more frequent than CLIA requires. ASHI performs an onsite inspection every 2 years and requires submission of a self-evaluation inspection in the intervening years. If the self-evaluation inspection indicates that an onsite inspection is warranted, ASHI conducts an additional onsite review. In addition, ASHI inspectors provide onsite proficiency testing samples to be processed during the inspection.

Subpart R—Enforcement Procedures

The ASHI meets the requirements of subpart R to the extent that it applies to accreditation organizations. The ASHI policy sets forth the actions the organization takes when laboratories it accredits do not comply with its requirements and standards for accreditation. When appropriate, the ASHI will deny, suspend, or, revoke accreditation in a laboratory accredited by the ASHI and report that action to us within 30 days. The ASHI also provides an appeals process for laboratories that have had accreditation denied, suspended, or revoked.

We have determined that the ASHI's laboratory enforcement and appeal policies are equal to or more stringent than the requirements of part 493 subpart R as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of ASHI accredited laboratories may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (that is, complaint inspections). The outcome of those validation inspections, performed by us or our agents, the State survey agencies, will be our principal means for verifying that the laboratories accredited by ASHI remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide that we may rescind the approval of an accreditation organization, such as that of the ASHI, for cause, before the end of the effective date of approval. If we determine that the ASHI failed to adopt requirements that are equal to, or more stringent than, the CLIA requirements, or that systemic problems exist in its inspection process, we may give it a probationary period, not to exceed 1 year to allow the ASHI to adopt comparable requirements.

Should circumstances result in our withdrawal of the ASHI's approval, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Collection of Information Requirements

This notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with the accreditation process for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program, codified in 42 CFR part 493 subpart E, are currently approved by OMB under OMB approval number 0938–0686.

VII. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: March 10, 2005.

Mark B. McClellan,

Administrator, Centers For Medicare & Medicaid Services.

[FR Doc. 05–5595 Filed 3–24–05; 8:45 am]

BILLING CODE 4121–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–0014–N]

Procedures for Non-Privacy Administrative Simplification Complaints Under the Health Insurance Portability and Accountability Act of 1996

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures for filing with the Secretary of the Department of Health and Human Services a complaint of non-compliance by a covered entity with certain provisions of the administrative simplification rules under 45 CFR parts 160, 162, and 164. It also describes the procedures the Department employs to review the complaints. These procedures are intended to facilitate the investigation and resolution of these complaints.

DATES: *Effective Date:* This notice is effective on April 25, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Phillips, (410) 786–6713.

ADDRESSES: Complaints may be filed with CMS in two ways: (1) By Internet using the Administrative Simplification Enforcement Tool at *http://htct.hhs.gov/.* (2) By mail at: The Centers for Medicare & Medicaid Services, HIPAA TCS Enforcement Activities, P.O. Box 8030, Baltimore, MD 21244–8030.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services delegated to the Administrator, Centers for Medicare & Medicaid Services (CMS), the authority to investigate complaints of noncompliance with, and to make decisions regarding the interpretation, implementation, and enforcement of certain regulations adopting administrative simplification

standards. See 68 FR 60694 (October 23, 2003). These regulations are codified at 45 CFR, parts 160, 162, and 164. This delegation includes authority with respect to the regulations known as follows: the Transaction and Code Set Rule (TCS), 65 FR 50313 (August 17, 2000), the National Employer Identifier Number (EIN) Rule, 67 FR 38009 (May 31, 2002), the Security Rule, 68 FR 8334 (February 20, 2003), the National Provider Identifier Rule, 69 FR 3434 (January 23, 2004), and the National Plan Identifier Rule (currently under development).

This delegation does not include authority with respect to the regulations adopted under section 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, as amended, known as the Privacy Rule. The Secretary has delegated to the Office for Civil Rights the authority to receive and investigate complaints as they may relate to the Privacy Rule codified at 45 CFR parts 160 and 164. For the purpose of this notice, ''administrative simplification provisions'' means the administrative simplification regulatory requirements under HIPAA, other than privacy. For more information about the administrative simplification provisions of HIPAA or what entities the law covers, go to *http://www.cms.hhs.gov/hipaa/hipaa2.*

1. Procedures for Filing Complaints

A person who believes that a covered entity is not complying with the applicable administrative simplification provisions may file a complaint with CMS. The term ''covered entity'' is defined at 45 CFR 160.103 and includes health plans, health care clearinghouses, and health care providers who conduct certain health care transactions electronically. A fourth type of covered entity, prescription drug card sponsors, was added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). CMS will not accept complaints until on or after the compliance date for the specific administrative simplification provision in question. (For example, complaints alleging a failure to comply with the Security Rule will not be accepted until after April 20, 2005.)

In order to permit efficient use of CMS resources, complaints must meet all of the following requirements:

- Be filed in writing, either on paper or electronically. CMS will not accept faxed complaints.
- Describe the acts or omissions believed to be in violation of the applicable administrative simplification provisions.
- Provide contact information, including name, address, and telephone number, for the complainant and the covered entity that are the subject of the complaint.
- Be filed within 180 days of when the complainant knew or should have known that the act or omission that is the subject of the complaint occurred, unless this time limit is waived by CMS for good cause shown.

Complainants may, but are not required to, use the CMS complaint form, which can be downloaded at *http://www.cms.hhs.gov.*

2. Procedures for Initial Processing of Complaints

Upon receipt of a complaint, CMS will review the complaint to determine if CMS will accept it for processing. CMS reserves the right to reject complaints. CMS will acknowledge its receipt of a complaint filed within 14 calendar days of receipt. That acknowledgment may be either electronic or on paper.

After CMS receives the complaint, CMS will make a preliminary review of the complaint to determine whether it is complete and appears to allege a failure to comply with an administrative simplification provision. The review will typically proceed as follows:

- If the complaint is complete and appears to allege a failure to comply with the applicable administrative simplification provisions, CMS will notify the complainant that the complaint is accepted for processing and further review. Acceptance of a complaint for processing and further review does not represent a determination that a compliance failure has occurred.
- If additional information is required to make the preliminary determination, CMS will ask the complainant to provide the additional information within a reasonable time, and the complaint will be held in abeyance until that information is received. Failure to provide the requested additional information when requested by CMS may lead to closure of the complaint, without prejudice to the complainant's right to re-file the complaint.
- CMS will close a complaint if it does not state a claim upon which CMS may act.

A complaint may be withdrawn at any time, upon notice to CMS in such form and manner as CMS may require. Even if a complaint is withdrawn, CMS may nonetheless determine to continue its investigation of the alleged non-compliance complaint. In general, a complaint that has been withdrawn before investigation may be re-filed. Complainants are, however, cautioned that they must re-file their complaint within 180 days of the date on which the complainant knew or should have known that the act or omission that is the subject of the complaint occurred, and should not assume that this time limit will be waived by CMS.

3. Complaint Processing and Review—Procedures

If after initial processing, as outlined in the previous section, a complaint is accepted for processing and review, CMS will begin an investigation of the complaint. CMS may request from the complainant such additional information and materials as it may require in order to evaluate whether a compliance failure may have occurred, as alleged in the complaint. Failure to provide the information when requested may result in closure of the complaint.

If based on the preliminary review and any additional information gathering CMS ascertains that a compliance failure by a covered entity may have occurred, CMS will advise the covered entity that a complaint has been filed and will inform the covered entity of the alleged compliance failure.

CMS will work with covered entities to obtain voluntary compliance. CMS will ask the covered entity to respond to the alleged compliance failure by submitting in writing: (1) A statement demonstrating compliance; or (2) a statement setting forth with particularity the basis for its disagreement with the allegations; or (3) a corrective action plan. CMS will afford the covered entity a reasonable time to respond to CMS' request for information, generally 30 days. Extensions may be granted, on a case-by-case basis, at CMS's sole discretion, and for good cause shown. It is expected that, in most cases, no more than one extension, of an additional 30 days, will be granted.

A covered entity that disagrees with the allegations made should set forth and document, where possible: (1) Compliance; (2) in what respect it believes the allegations to be factually incorrect or incomplete; and/or (3) why it disagrees that its alleged actions or failures to act constitute a failure to comply. Upon receipt of this response from the covered entity, CMS may communicate further with the covered entity and request the opportunity to interview knowledgeable persons or to review additional documents or materials. CMS expects that additional information or access to witnesses will be provided in a timely manner. CMS may also seek additional information from the complainant.

A covered entity may amend or supplement its response at any time and may propose voluntary compliance through a corrective action plan at any time. CMS may require modifications in the terms of a proposed corrective action plan as a prerequisite to accepting the corrective action plan. If a corrective action plan is accepted, CMS will actively monitor the plan, and the covered entity will be required to periodically report to CMS its progress towards compliance. If the covered entity comes into voluntary compliance, CMS will notify the complainant by mail or electronically. The parties to the complaint will be notified, as appropriate, when the complaint is closed.

CMS will make reasonable efforts to secure a timely response from the covered entity. If the covered entity fails or refuses to provide the information sought, an investigational subpoena may be issued in accordance with 45 CFR 160.504 to require the attendance and testimony of witnesses and/or the production of any other evidence sought in furtherance of the investigation.

After finding that a violation exists, the Secretary will pursue other options, such as, but not limited to, civil money penalties.

Collection of Information Requirements

The form associated with this complaint process entitled, ''HIPAA Non-Privacy Complaint Form'', is currently approved under OMB control number 0938–0948.

Authority: Sections 1102 and 1171 through 1179 of the Social Security Act (42 U.S.C. 1302a and 1320d through 1320d–8).

Dated: December 7, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 05–5795 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2204–FN]

Medicare and Medicaid Programs; Reapproval of the Deeming Authority of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Home Health Agencies

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Joint Commission on Accreditation of Healthcare Organizations for continued recognition as a national accreditation program for home health agencies seeking to participate in the Medicare or Medicaid programs.

EFFECTIVE DATE: This final notice is effective March 31, 2005 through March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a Home Health Agency (HHA) provided certain requirements are met. Sections 1861(o) and 1891 of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as an HHA program. The regulations at 42 CFR part 484 specify the conditions that an HHA must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for home health care. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, to enter into an agreement, an HHA must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 484 of our regulations. Then, the HHA is subject to regular surveys by a state survey agency to determine whether it continues to meet those requirements. There is an alternative, however, to surveys by state agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we would ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years or sooner as we determine. The Joint Commission on Accreditation of Healthcare Organizations' (JCAHO's) term of approval as a recognized accreditation program for HHAs expires March 31, 2005.

II. Deeming Applications Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210-calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Proposed Notice

On September 24, 2004, we published a proposed notice (69 FR 57305) announcing the JCAHO's request for reapproval as a deeming organization for HHAs. In the proposed notice, we detailed our evaluation criteria. Under section 1865(b)(2) of the Act and our regulations at § 488.4 (Application and reapplication procedures for accreditation organizations) and § 488.8 (Federal review of accreditation organization), we conducted a review of the JCAHO application in accordance with the criteria specified by our regulation, which include, but are not limited to the following:

- An onsite administrative review of JCAHO's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of JCAHO's HHA accreditation standards to our current Medicare HHA conditions for participation.

• A documentation review of JCAHO's survey processes to:

+ Determine the composition of the survey team, surveyor qualifications, and the ability of JCAHO to provide continuing surveyor training.

+ Compare JCAHO's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate JCAHO's procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. The monitoring procedures are used only when the JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).

+ Assess JCAHO's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish JCAHO's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of JCAHO's survey process.

+ Determine the adequacy of staff and other resources.

+ Review JCAHO's ability to provide adequate funding for performing required surveys.

+ Confirm JCAHO's policies with respect to whether surveys are announced or unannounced.

+ Obtain JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the September 24, 2004 proposed notice (69 FR 57305) also solicited public comments regarding whether JCAHO's requirements met or exceeded the Medicare conditions of participation for HHA. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between the Joint Commission on Accreditation of Healthcare Organizations' and Medicare's Conditions and Survey Requirements

We compared the standards contained in JCAHO's ''Comprehensive Accreditation Manual for Home Care'' and its survey process in the ''Request for Continued Deeming Authority for Home Health Agencies Handbook'' with the Medicare HHA conditions for participation and our State Operations Manual. Our review and evaluation of JCAHO's deeming application, which were conducted as described in section III of this final notice yielded the following:

• To comply with the requirements at § 484.20(a), JCAHO has agreed not to schedule the unannounced home health survey without written confirmation of a successful Outcomes and Assessment Information Set (OASIS) transmission.

• To meet the requirements at § 488.4(b)(3)(v), JCAHO amended its policies and procedures to permit its surveyors to serve as witnesses if we take an adverse action based on accreditation findings.

B. Term of Approval

Based on the review and observations described in sections III and IV of this final notice, we have determined that JCAHO's requirements for HHAs meet or exceed our requirements. Therefore, we recognize the JCAHO as a national accreditation organization for HHAs that request participation in the Medicare program. Because we are planning to revise the conditions of participation for HHAs over the next 3 years, we believe it is most appropriate to renew the current deeming authority for a similar period. As a result, we are approving JCAHO's program effective March 31, 2005 through March 31, 2008.

V. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, ''Survey, Certification, and Enforcement Procedures,'' are currently approved by OMB under OMB approval number 0938–0690.

VI. Regulatory Impact Statement

We have examined the impact of this final notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 98–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes JCAHO as a national accreditation organization for HHAs that request participation in the Medicare program. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this final notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. We have determined, and the Secretary certifies, that this final notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In an effort to better assure the health, safety, and services of beneficiaries in HHAs already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem HHAs accredited by JCAHO as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget. In accordance with Executive Order 13132, we have determined that this final notice will not significantly affect the rights of States, local, or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare'Supplemental Medical Insurance Program)

Dated: February 18, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–5033 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2208–FN]

Medicare and Medicaid Programs; Recognition of the American Osteopathic Association (AOA) for Continued Approval of Deeming Authority for Hospitals

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces the Centers for Medicare & Medicaid Services' (CMS') reapproval of the American Osteopathic Association (AOA) as a national accreditation organization for hospitals that request participation in the Medicare program. We have determined that accreditation of hospitals by AOA demonstrates that all Medicare hospital conditions of participation are met or exceeded. Thus, CMS will continue to grant deemed status to those hospitals accredited by AOA.

DATES: *Effective Date:* This final notice is effective March 25, 2005 through September 25, 2009.

FOR FURTHER INFORMATION CONTACT: Marjorie Eddinger (410) 786–0375.

SUPPLEMENTARY INFORMATION:

I. Background

A. Laws and Regulations

Under the Medicare program, eligible beneficiaries may receive covered services in a hospital provided certain requirements are met. The regulations specifying the Medicare conditions of participation for hospitals are located in 42 CFR part 482. These conditions implement section 1861(e) of the Social Security Act (the Act), which specifies services covered as hospital care and the conditions that a hospital program must meet in order to participate in the Medicare program.

Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to the activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, in order to enter into a provider agreement, a hospital must first be certified by a State survey agency as complying with the conditions or standards set forth in the statute and part 482 of the regulations. Then, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet Medicare requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act permits hospitals accredited by the AOA to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. Section 1865(b)(1) of the Act provides that, if a provider demonstrates through accreditation that all applicable conditions are met or exceed the Medicare conditions, we shall ''deem'' the hospital as having met the health and safety requirements.

Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require reapplication at least every 6 years and permit us to determine the required materials from those enumerated in § 488.4 and the deadline to reapply for continued approval of deeming authority.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act further requires that our findings concerning review of national accrediting organizations consider, among other factors, the accreditation organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and ability to supply information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide us with necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice of the national accreditation body's application, identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. Subsequently, we have 210 days from the receipt of the request to publish approval or denial of the application.

The purpose of this notice is to notify the public of our decision to approve AOA's request for continuation of its deeming authority. This decision is based on our finding that the AOA's separate accreditation program for hospital care meets or exceeds the Medicare hospital conditions of participation.

III. Proposed Notice

On September 24, 2004, we published a proposed notice in the **Federal Register** (69 FR 57308) announcing AOA's request for reapproval as a deeming organization for hospitals. In the notice, we detailed the evaluation criteria. As set forth under section 1865(b)(2) of the Act and our regulations at § 488.8(d)(3)(i), our review and evaluation of the AOA application included the following:

1. An on-site administrative review of the corporate policies, resources to accomplish the accreditation surveys, program and surveyor evaluation and monitoring, AOA's ability to investigate and respond appropriately to complaints against accredited facilities, and the survey review and decision-making process for accreditation.

2. A determination of the equivalency of AOA's standards for a hospital to our comparable hospital conditions of participation.

3. A review through documentation and on-site observation of AOA's survey processes to determine the following:

- The comparability of AOA's processes to those of State agencies, including survey frequency and whether surveys are announced or unannounced.
- The adequacy of the guidance and instructions and survey forms AOA provides to surveyors.
- AOA's procedures for monitoring providers or suppliers found to be out of compliance with program requirements. (These procedures are used only when AOA identifies noncompliance.)

4. AOA's procedures for responding to complaints and for coordinating these activities with appropriate licensing bodies and ombudsmen programs.

5. AOA's policies and procedures for identifying potential fraud and abuse and its coordination with, or reporting to, CMS.

6. AOA's survey team, the content and frequency of the in-service training provided, the evaluation systems used to assess the performance of surveyors, and potential conflict-of-interest policies and procedures.

7. AOA's data management system and reports used to assess its surveys and accreditation decisions, and its ability to provide us with electronic data and new statistical validation information including the number, accreditation status, and resurvey cycle for facilities; the number, types, and resolution times for follow up when

deficiencies are detected during surveys; the top 10 deficiencies found, and the number of actionable cases of noncompliance and the method and time frame for resolution.

8. A review of all types of accreditation status AOA offers and an assessment of the appropriateness of those for which AOA seeks deemed status.

9. A review of the pattern of AOA's deemed facilities (that is, types and duration of accreditation and its schedule of all planned full and partial surveys).

10. The adequacy of AOA's staff and other resources to perform the surveys, and its financial viability.

11. AOA's written agreement to:

- Meet our requirements to provide to all relevant parties, timely notifications of changes to accreditation status or ownership, to report to all relevant parties remedial actions or immediate jeopardy, and to conform its requirements to changes in Medicare requirements; and
- Permit its surveyors to serve as witnesses for us in adverse actions against its accredited facilities.

IV. Summary of Public Comments Received on the Proposed Notice and Our Responses

We received no public comments.

V. Review and Evaluation

Our review and evaluation of the AOA application, which were conducted as detailed above, yielded the following information.

We compared the standards contained in the AOA ''Accreditation Requirements for Healthcare Facilities'' and the AOA's survey process outlined in its ''Survey Team Handbook'' supplemented by flow charts of the survey process with the Medicare conditions of participation and the ''State Operations Manual''. The AOA has made the following revisions or clarifications.

1. AOA developed and implemented standards and survey processes to address the new Quality Assessment and Performance Improvement Program Condition of Participation in accordance with the provisions of § 482.21.

2. AOA developed and implemented standards and survey processes to address the new Life Safety from Fire Standard (which implements the use of the 2000 edition of the Life Safety Code of the National Fire Protection Association) in accordance with the provisions of § 482.41(b).

3. AOA developed and implemented standards and survey processes to address changes in the Discharge Planning Condition of Participation in accordance with § 482.43.

4. AOA developed and implemented standards and survey processes to address changes in the Nursing Services Condition of Participation in accordance with § 482.23.

5. AOA developed and implemented standards and survey processes to address changes in the requirements for physician supervision of certified registered nurse anesthetists (CRNAs) in Anesthesia Services Condition of Participation in accordance with § 482.52.

6. AOA developed and implemented standards, explanations, and survey processes that are consistent with the Regulations at 42 CFR part 482 and CMS Interpretive Guidelines for the Hospital Conditions of Participation in Appendix A of the State Operations Manual which include the following:

- In order to meet the requirements of § 482.13(a)(2), AOA added wording to its standard that makes the governing body responsible for the grievance process.
- AOA added language to its standard 1.00.13 that the hospital must maintain a list of all contracted services, including scope and nature of services provided to meet the standard of § 482.12(e)(2).
- AOA included criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges in order to meet the requirements of § 482.22(c)(6).
- In order to comply with the requirements at § 482.27(c)(3)(i) and § 482.27(c)(3)(ii), AOA added language to its standard concerning the hospital's policies about the disposition of blood or blood products and quarantine all blood and blood products from previous donations in inventory.
- In order to meet the requirements of § 482.27(c)(1), AOA added the FDA definition of potentially infectious blood and blood products to its standard.
- AOA reworded its standard at 15.05.02 to address CMS restraint requirements at § 482.13(e)(2) and § 482.13(f)(2).
- In order to meet the requirements of §§ 482.13(b)(1) and § 482.13(b)(2), AOA added standards that included the patient's right to participate in the development and implementation of his or her plan of care, and the right to be informed of his or her health status, care planning, and treatment.
- In order to meet the requirements of § 482.23(b)(1), AOA added language to its standard to include that the hospital must provide 24-hour registered nursing services at all times, except for rural hospitals that have in effect a 24-hour registered nursing waiver granted under § 488.54.
- AOA added standards to its chapter on Respiratory Services in order to meet the requirements at § 482.57, § 482.57(a), § 482.57(b), and § 482.57(b)(2).
- In order to meet the requirements of § 482.53(b) and § 482.53(b)(3), AOA added language to its chapter 23.00.01 on Nuclear Medicine Services.
- AOA added language to its standard to address the responsibility of daily management of the dietary services and that the individual was qualified by experience or training in order to meet the requirements at § 482.28(a)(1)(ii) and § 482.28(a)(1)(iii).
- To meet the requirements at § 482.28(b)(2), AOA added the language that nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the patients.
- AOA added language to its chapter on Surgical Services language that the organization of the surgical services must be appropriate to the scope of the services offered in order to meet CMS standards at § 482.51(a).
- In order to meet the requirements at § 482.51(b)(4), AOA added to its standard wording to state that there must be adequate provisions for immediate post-operative care.

7. All AOA hospital surveys will be unannounced effective January 1, 2006 in accordance with the CMS policy of unannounced hospital surveys.

8. AOA revised procedures and clarified its timeframes for complaint investigations in accordance with the State operations Manual.

9. AOA redesigned its survey process to emphasize the use of interviews and surveyor observations of patient care and other compliance activities in order to determine the hospital compliance with requirements.

VI. Results of Evaluation

We completed a standard-by-standard comparison of AOA's conditions or requirements for hospitals to determine whether they met or exceeded Medicare requirements. We found that, after requested revisions were made, AOA's requirements for hospitals did meet or exceed our requirements. In addition, we visited the corporate headquarters of AOA to validate the information it submitted and to verify that its administrative systems could adequately monitor compliance with its standards and survey processes and that

its decision-making documentation and processes met our standards. We also observed a survey in real time to see that it met or exceeded our standards. As a result of our review of the documents and observations, we requested certain clarifications to AOA's survey and communications processes. These clarifications were provided as indicated above, and changes were made to the documentation in the application. Therefore, we recognize AOA as a national accreditation organization for hospitals that request participation in the Medicare program, effective March 25, 2005 through September 25, 2009.

VII. Collection of Information Requirements

This document does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation, codified in part 488, ''Survey, Certification, and Enforcement Procedures,'' are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of October 31, 2005.

VIII. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes AOA as a national accreditation organization for hospitals that request participation in the Medicare program. As evidenced by the following data for the cost of surveys, there are neither significant costs nor savings for the program and administrative budgets of the Medicare program. This notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In an effort to better ensure the health, safety, and services of beneficiaries in hospitals already certified, and to provide relief to State budgets in this time of tight fiscal constraints, we deem hospitals accredited by the AOA as meeting our Medicare hospital conditions of participation.

In accordance with Executive Order 13122, Federalism, we have included various provisions throughout this regulation that demonstrate cooperation with the States. For example, while the provisions of this notice may reduce the number of surveys a State Agency performs for Medicare certification of hospital, it may engender additional validation surveys to assess the performance of the AOA survey process and standards as the validation process expands with the growth of deemed status facilities. State officials will remain responsible for any survey and certification requirements that are allegedly not being enforced.

IX. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by OMB.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.778, Medical Assistance Program)

Dated: February 18, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–5550 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2256–FN]

Medicare and Medicaid Programs; Reapproval of the Deeming Authority of the Community Health Accreditation Program (CHAP) for Home Health Agencies

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Community Health Accreditation Program for continued recognition as a national accreditation program for home health agencies seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective March 31, 2005 through March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a Home Health Agency (HHA) provided certain requirements are met. Sections 1861(o) and 1891 of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as an HHA program. The regulations at 42 CFR part 484 specify the conditions that an HHA must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for home health care. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, to enter into an agreement, an HHA must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 484 of our regulations. Then, the HHA is subject to regular surveys by a state survey agency to determine whether it continues to meet those requirements. There is an alternative, however, to surveys by state agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we would ''deem'' those provider entities as having met the

requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years or sooner as we determine. The Community Health Accreditation Program's (CHAP's) term of approval as a recognized accreditation program for HHAs expires March 31, 2005.

II. Deeming Applications Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Proposed Notice

On September 24, 2004, we published a proposed notice (69 FR 57307) announcing the CHAP's request for reapproval as a deeming organization for HHAs. In the proposed notice, we detailed our evaluation criteria. Under section 1865(b)(2) of the Act and our regulations at § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of the CHAP application in accordance with the criteria specified by our regulation, which include, but are not limited to the following:

- An onsite administrative review of CHAP's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of CHAP's HHA accreditation standards to our current Medicare HHA conditions for participation.
- A documentation review of CHAP's survey processes to:
  + Determine the composition of the survey team, surveyor qualifications, and the ability of CHAP to provide continuing surveyor training.
  + Compare CHAP's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  + Evaluate CHAP's procedures for monitoring providers or suppliers found to be out of compliance with CHAP program requirements. The monitoring procedures are used only when the CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).
  + Assess CHAP's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  + Establish CHAP's ability to provide us with electronic data in ASCII–comparable code and reports necessary for effective validation and assessment of CHAP's survey process.
  + Determine the adequacy of staff and other resources.
  + Review CHAP's ability to provide adequate funding for performing required surveys.
  + Confirm CHAP's policies with respect to whether surveys are announced or unannounced.
  + Obtain CHAP's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the September 24, 2004 proposed notice (69 FR 57307) also solicited public comments regarding whether CHAP's requirements met or exceeded the Medicare conditions of participation for HHAs. In response to our proposed notice, we did receive a comment of support for CHAP to remain a deeming authority for home health agencies.

IV. Provisions of the Final Notice

A. Differences Between the Community Health Accreditation Program's and Medicare's Conditions and Survey Requirements

We compared the standards contained in CHAP's ''Standard of Excellence for HHAs'' and ''The Core Standards of Excellence'' and its survey process in the ''Reapplication for Deeming Authority for HHA Programs'' with the Medicare HHA conditions for participation and our State Operations Manual. Based on our review and evaluation as described in section III of this final notice, CHAP has made the following revisions and clarifications:

- CHAP included the assignment of the home health aide to a specific patient as its standard to meet the requirements at § 484.36(c)(1).
- CHAP stated in its element that the home health agency must comply with subpart I of 42 CFR part 489 and each patient must receive written information on the HHA's policies on advance directives in order to comply with the requirements at § 484.10(c)(2)(ii).
- CHAP addressed in its element the provisions of the drug regimen review at § 484.55(c).

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that CHAP's requirements for HHAs meet or exceed our requirements. Therefore, we recognize the CHAP as a national accreditation organization for HHAs that request participation in the Medicare program. Because we are planning to revise the conditions of participation for HHAs over the next 3 years, we believe it is most appropriate to renew the current deeming authority for a similar period. As a result, we are approving CHAP's program effective March 31, 2005 through March 31, 2008.

V. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, ''Survey, Certification, and Enforcement Procedures,'' are currently approved by OMB under OMB approval number 0938–0690.

VI. Regulatory Impact Statement

We have examined the impact of this final notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 98–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes CHAP as a national accreditation organization for HHAs that request participation in the Medicare program. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this final notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. We have determined, and the Secretary certifies, that this final notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In an effort to better assure the health, safety, and services of beneficiaries in HHAs already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem HHAs accredited by CHAP as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget. In accordance with Executive Order 13132, we have determined that this final notice will not significantly affect the rights of States, local or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: February 11, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–5034 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3112–FN; 0938–ZA49]

Medicare Program; Disapproval of Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: In this final notice, we summarize timely public comments received in response to our July 23, 2004 notice with public comment period and announce our decision concerning applications submitted by Alcon Laboratories, Incorporated (Alcon) and Advanced Medical Optics (AMO) (formerly Pharmacia & Upjohn Company) [1] to adjust the Medicare payment amounts for certain intraocular lenses (IOLs) on the basis that they are new technology intraocular lenses (NTIOLs).

This is the third of three statutorily required **Federal Register** documents. On February 27, 2004, we published a notice in the **Federal Register** that solicited interested parties to submit requests for review of the appropriateness of the payment amount for an IOL furnished by an ambulatory surgical center. On July 23, 2004, we published a notice with comment period entitled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' acknowledging timely receipt of application materials from Alcon and AMO. In this final notice, we announce our decision to disapprove the NTIOL applications submitted by both Alcon and AMO.

FOR FURTHER INFORMATION CONTACT: Michael Lyman, (410) 786–6938.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b)(1) of SSAA 1994 required us to develop and implement a process under which interested parties may request a review of the appropriateness of the payment amount for intraocular lenses furnished by ASCs under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act) on the basis that those lenses constitute a class of new technology intraocular lenses.

On June 16, 1999, we published a final rule in the **Federal Register** entitled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' (64 FR 32198), which added subpart F to 42 CFR part 416. The June 16, 1999 final rule established a process for adjusting payment amounts for NTIOLs furnished by ambulatory surgical centers (ASCs), defined the terms relevant to the process, and established a flat rate payment adjustment of $50 for IOLs that we determine are NTIOLs. The payment adjustment applies for a 5-year period that begins when we recognize a payment adjustment for the first IOL in a new class of technology, as explained below. Any subsequent IOLs having the same characteristics as the first IOL recognized for a payment adjustment will receive the same adjustment for the remainder of the 5-year period established by the first recognized NTIOL. In accordance with the payment review process specified in § 416.185, after July 16, 2002, the $50 adjustment amount can be modified through proposed and final rulemaking in connection with ASC services. To date, we have made no changes to the payment amount and have opted not to change the adjustment for calendar year 2004 (CY 2004).

We have previously approved two classes of NTIOLs: Multifocal and Reduction in Preexisting Astigmatism. These IOLs were approved for NTIOL status during calendar year 2000.

II. NTIOL Applications Submitted for Calendar Year 2004

On February 27, 2004, we published a notice in the **Federal Register** entitled

[1] Advanced Medical Optics acquired Pharmacia & Upjohn Company's surgical product line on June 28, 2004 and is now the party of interest for purposes of this Final Notice.

''Medicare Program; Calendar Year 2004 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)'' (69 FR 9322). In response to the February 27, 2004 notice, we received the following timely requests for review:

1. Manufacturer: Alcon Laboratories, Inc. Model Numbers: ACRYSOF® Natural IOL; Models: SB30AL (5.5 mm optic) and SN60AT (6.0 mm optic). These two models are made out of the same material and differ only in optic size. Accordingly, we are treating the two lenses as the same lens.

2. Manufacturer: Advanced Medical Optics. Model Numbers: Tecnis®, with Z-Sharp Optic Technology, Foldable Posterior Chamber IOL; Models Z9000 (12 mm diameter) and Z9001 (13 mm diameter). These two models are also made out of the same material and differ only in diameter. Accordingly, we are also treating these lenses as the same lens.

On July 23, 2004, we published in the **Federal Register** a notice with comment period entitled ''Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' (69 FR 44029) that summarized these timely applications and solicited public comments on the IOLs submitted by Alcon and AMO.

III. Criteria and Process for NTIOL Determination

We will classify an IOL as an NTIOL if the lens meets the definition of a ''new technology IOL'' in § 416.180, which incorporates section 141(b)(2) of SSAA 1994. Under that section, a ''new technology IOL'' is defined as ''an IOL that CMS determines has been approved by the FDA for use in labeling and advertising the IOL's claims of specific clinical advantages and superiority over existing IOLs with regard to reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.''

The process we use for evaluating requests for NTIOL designation and reviewing the appropriateness of the payment amount for a NTIOL furnished by ASCs is described in our regulations at part 416, subpart F and in the February 27, 2004 **Federal Register** notice.

This process includes—

- Publishing a public notice in the **Federal Register** identifying requirements and the deadline for submitting a request;
- Processing requests to review the appropriateness of the payment amount for an IOL;
- Compiling a list of the requests we receive that identify the IOL manufacturer, IOL model number under review, name of the requester, and a summary of the request for review of the appropriateness of the IOL payment amount;
- Publishing an annual public notice in the **Federal Register** that lists the requests and provides for a public comment period;
- Reviewing the information submitted with the applicant's request for review, and requesting confirmation from the FDA about labeling applications that have been approved on the IOL model under review. We also request the FDA's recommendations as to whether or not the IOL model submitted represents a new class of technology that sets it apart from other IOLs. Using a baseline of the date of the last determination of a new class of IOLs, the FDA states an opinion based on proof of superiority over existing lenses of the same type of material or over lenses providing specific clinical advantages and superiority over existing IOLs as described in the preceding paragraph;
- Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information;
- Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class;
- Publishing a notice in the **Federal Register** announcing the IOLs that we have determined are ''new technology'' IOLs. These NTIOLs qualify for the following payment adjustment: (a) Determinations made before July 16, 2002—$50; (b) Determinations made after July 16, 2002—$50 or the amount announced through proposed and final rules in connection with ASC services; and
- Adjusting payments effective 30 days after the publication of the final notice announcing our determinations described in paragraph (8) of this section.

In accordance with our NTIOL application review procedures, we asked the FDA to review the Alcon and AMO NTIOL applications to determine whether the manufacturers' claims of specific clinical advantages and superiority over existing IOLs had been approved for labeling and advertising purposes. Our regulations require the FDA's approval of a requestor's claims for advertising and labeling in order for an IOL to be classified as a NTIOL.

IV. Analysis of and Responses to Public Comments

We received 14 timely public comments in response to the July 23, 2004 notice with comment period on the NTIOLs under review. Of these, 11 were from ophthalmologists, two were from IOL manufacturers, and one was from a private citizen. The comments we received and our responses are as follows:

Comment: Five commenters supported the Alcon Laboratories, Inc. Acrysof® lenses without distinguishing between the two models presented, and five commenters supported the AMO Tecnis® lenses without distinguishing between the two models presented. Based on their positive experiences with the IOLs, these commenters requested that the IOLs under review be classified as NTIOLs, and therefore, eligible for the payment adjustment.

Response: We appreciate the commenters' interests in these lenses and are pleased that these lenses have improved the quality of life of Medicare beneficiaries. However, anecdotal evidence supporting NTIOL status is not sufficient to characterize an IOL as a NTIOL. Our regulations at § 416.180 prohibit us from characterizing an IOL as a NTIOL unless the FDA has approved for use in labeling and advertising the IOL's claims of specific clinical advantages and superiority over existing IOLs. The FDA must rely on published clinical data to make this determination. Testimonials in support of an IOL being reclassified as a NTIOL cannot substitute for the FDA's approval. We present the FDA review in section V.

Comment: Two comments from ophthalmologists opposed NTIOL status for the Alcon Laboratories, Inc. Acrysof® lenses, contending that the relationship between blue light and macular degeneration is speculative. The comments did not distinguish between the two models presented.

Response: Based upon our review of the literature, we agree with the commenters that the relationship between blue light and macular degeneration is speculative and not proven by available evidence. We present our review of the literature in section V.

Comment: We received one comment from an IOL manufacturer opposing NTIOL status for the Alcon Laboratories, Inc. Acrysof® IOLs, contending that the FDA failed to approve Alcon's claims of

specific clinical advantages. The comment did not distinguish between the two models presented.

Response: While the manufacturer claims clinical advantages for blue light filtering in its application for NTIOL status, the manufacturer does not make this claim in its FDA-approved labeling. As previously stated, claims of clinical superiority must be approved by the FDA for use in labeling and advertising for an IOL to qualify as a NTIOL under § 416.180. We believe that the relationship between blue light and macular degeneration is not adequately substantiated by the literature.

Comment: We received one comment from an IOL manufacturer opposing NTIOL status for the AMO Tecnis® lenses, claiming they provide no useful improvements over existing IOLs.

Response: The literature submitted by the manufacturer validates AMO's claims of increased contrast sensitivity for the Tecnis® IOLs only when the lenses are compared to one other IOL. However, both the literature submitted by AMO and our independent review of the literature did not show that the Tecnis® lenses demonstrate increased contrast sensitivity over the spectrum of available IOLs. We believe that for a lens to be approved as an NTIOL, it must offer benefits superior to those offered by more than one other available lens.

V. NTIOL Decision—Disapproval of July 23, 2004 Applications by Alcon and AMO

A. Alcon Acrysof® Natural Lenses; Model Numbers SB30AL and SN60AT

Alcon claims to have created a class of IOL that reduces chronic blue light exposure to the retina and reduces long-term retinal damage (macular degeneration). However, these claims are absent from the IOLs' FDA-approved labeling and advertising. In addition, a July 12, 2004 FDA letter to CMS concerning Alcon's NTIOL application states, in part, as follows: ''* * * At this point, it appears as though there is no definitive explanation in regards to the extent blue light plays in retinal damage. Retinal damage is a multi-factorial issue, because so many things (*e.g.*, environment, nutrition, etc.) may also impact the degree of damage, if any.''

The same FDA letter also states that Alcon did not receive FDA approval to make the claim in its labeling that ''the blue light filtering quality of the ACRYSOF® Natural IOL provides a specific clinical advantage over existing IOLs in mitigating the risk of blue light-mediated damage to the retina.'' In contrast, the FDA approved labeling states only that blue light transmittal is reduced ''without negatively affecting color vision.'' No claims of clinical superiority for reducing blue light transmission are made in the labeling. Accordingly, because the FDA has not approved labeling supporting Alcon's claim that these lenses, independent of the other influencing factors, reduce long-term retinal damage, we cannot approve Alcon's application to adjust the Medicare payment amounts for these lenses. Additionally, we reviewed the literature submitted by Alcon and performed our own literature search. There is insufficient published peer-reviewed evidence addressing the cause and effect relationship between the blue light filtering effects of an IOL and retinal damage.

B. AMO Tecnis® Lenses with Z-Sharp Optic Technology, Foldable Posterior Chamber IOL; Models Z9000 and Z9001

In a July 12, 2004 letter to CMS regarding AMO's NTIOL application, the FDA states that ''* * * significantly less with the Tecnis® lens than with the acrylic lens. The simulated night driving results (functional vision) under several of the conditions tested and the visual acuity results were statistically significantly better in [the] eye implanted with the Technis® lens. However, another objective [of] the study was to demonstrate the mesopic (6 cd/m^2) intra-individual difference in the postoperative quality of vision using sine-wave contrast sensitivity testing between the Tecnis® lens (Z9000) and a lens with a spherical optic. In this clinical investigation, the contrast sensitivity results were not significantly different as stated in the labeling.''

We interpret this FDA statement, as well as our own literature review, to mean that while there may be a difference in contrast sensitivity between the Tecnis® lens and two other IOLs tested, that difference is not statistically significant. We also reviewed the literature submitted by AMO and performed our own literature search. We believe there is insufficient published peer-reviewed evidence addressing the cause and effect relationship between the implanted Tecnis® lens and a reduction in contrast sensitivity. However, we encourage AMO to resubmit this application with additional data from published peer-reviewed evidence.

VI. Collection of Information Requirements

Because the requirements referenced in this final notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the 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). We have determined that this final notice is not a major rule. The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $8.5 million or less in any 1 year. We have determined that this final notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a regulation 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. We have determined that this final notice does not have a significant 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 that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the

private sector, of $110 million. We have determined that this final notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this final notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this final notice was not reviewed by the Office of Management and Budget.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–5593 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1297–N]

Medicare Program; Public Meetings in Calendar Year 2005 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the dates and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2005 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. Discussion will be directed toward responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

DATES: *Meeting Dates:* Given the expansion of the public meeting process, we have scheduled 8 additional meeting times for 2005: Tuesday, June 7; Wednesday, June 8; Tuesday, June 14; Wednesday, June 15; Thursday, June 16; Tuesday, June 21; Wednesday, June 22; and Thursday, June 23. We may not need all 8 days. Once the review and coding recommendation process is underway, we will have a firmer idea of the exact number of days needed to schedule the public meetings. We will consider each meeting individually, and we may modify the meeting dates and times published in this notice.

Final confirmation of meeting dates, times, and agenda items will be posted 3 weeks in advance of each scheduled meeting on the official HCPCS Web site: *http://www.cms.hhs.gov/medicare/hcpcs*. Each meeting day will begin at 9 a.m. and end at 5 p.m., E.S.T.

ADDRESSES: The public meetings will be held in the auditorium at Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Gloria Knight, (410) 786–4598, Jennifer Carver, (410) 786–6610.

Web Site: Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 1 month before the first meeting date on the official HCPCS Web site: *http://www.cms.hhs.gov/medicare/hcpcs*.

Individuals who intend to provide a presentation at a public meeting need to familiarize themselves with this information. The HCPCS Web site will also include ''The Healthcare Common Procedures Coding System (HCPCS) Procedures,'' a description of the new HCPCS coding process, along with a detailed explanation of the procedures used to make coding and payment determinations for all the products, supplies, and services that are coded in the HCPCS. A summary of each public meeting will be posted on the HCPCS Web site by the end of July 2005.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

We published a notice in the November 23, 2001 **Federal Register** (66 FR 58743) with information regarding the establishment of the public meeting process for DME.

The public meeting process previously limited to DME has been expanded to include all new public requests for revisions to the HCPCS. This change will provide more opportunities for the public to become aware of coding changes under consideration, as well as opportunities for CMS to gather public input.

II. Registration

Registration Procedures: Registration can be completed online at *http://www.cms.hhs.gov/medicare/hcpcs*. To register by telephone, contact Public Meeting Coordinators Gloria Knight at (410) 786–4598 or Jennifer Carver at (410) 786–6610. The following information must be provided when registering: name, company name and address, telephone and fax numbers, e-mail address, and special needs information. Registrants must also indicate whether they are the ''primary speaker'' for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. A CMS staff member will confirm your registration by mail, e-mail, or fax.

Registration Deadline: Individuals must register for each date they plan either to attend or to provide a presentation. The deadline for registration of all the meeting dates is Tuesday, May 17, 2005.

III. Presentations and Comment Format

A. Primary Speaker Presentations

The entity that requested revisions to the HCPCS coding system for a particular agenda item may designate one ''primary speaker'' to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and must incorporate the demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to

the speaker by increments of less than 15 minutes. In other words, the amount of time allotted to aggregate proposals might not be expanded exponentially by the number of requests.

We will post ''Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations'' on the official HCPCS Web site at least a month before the first public meeting in 2005 for all new public requests for revisions to the HCPCS. Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described above and, at least 15 days before the meeting, contact one of the Public Meeting Coordinators, Gloria Knight at (410) 786–4598 or Jennifer Carver at (410) 786–6610. At the time of registration, primary speakers must provide a brief, written statement regarding the nature of the information they intend to provide, and advise the meeting coordinator regarding needs for audio/visual Support. In order to avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accommodate tapes and disk files that are received by the Public Meeting Coordinators 7 or more calendar days before the meeting.

B. ''5-Minute'' Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many 5-minute speakers can be accommodated. In order to offer the same opportunity to all attendees, there is no pre-registration for 5-minute speakers. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. They must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that will be addressed.

C. Speaker Declaration

On the day of the meeting, prior to the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the Public Meeting Coordinator.

The primary speakers and the 5-minute speakers must declare in their presentations at the meeting, as well as in their written summaries, whether they have any financial involvement with the manufacturers or competitors of any items or services being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

D. Written Comments From Meeting Attendees

Written comments are welcome from all persons in attendance at a public meeting, regardless of whether they make an oral presentation. Written comments can be submitted either at the meeting or before the meeting via e-mail to *http://www.cms.hhs.gov/medicare/hcpcs* or via regular mail to the HCPCS Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244. Written comments to this address are also accepted from the general public anytime up to the date of the public meeting at which a request is discussed. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

IV. Security, Building, and Parking Guidelines

The meetings are held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring government-issued photo identification and a copy of your written meeting registration confirmation. Persons without proper identification may be denied access.

Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting each day.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Parking permits and instructions are issued upon arrival by the guards at the main entrance.

All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.

V. Special Accommodations

Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, must provide this information when registering for the meeting.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 139hh).

Dated: March 8, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–5029 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3151–N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—May 24, 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee (MCAC). The Committee provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary under the Medicare statute. This meeting concerns the treatment of vertebral body compression fractures. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: This public meeting will be held on Tuesday, May 24, 2005 from 7:30 a.m. until 4:30 p.m. e.d.t.

Deadlines

Deadline for Presentations and Comments: Written comments and presentations must be received by May 4, 2005, 5 p.m., e.d.t.

Deadline for Registration to Attend Meeting: For security reasons,

individuals wishing to attend this meeting must register by close of business on May 16, 2005.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by April 19, 2005 (*see* **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Blvd, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Executive Secretary, by telephone at (410) 786–2881 or by e-mail at *michelle.atkinson@cms.hhs.gov*

Hotline

You can access up-to-date information on this meeting on the CMS Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area, (410) 786–9379.

Website

You can access up-to-date information on this meeting at *www.cms.hhs.gov/mcac/default.asp#meetings.*

Presentations and Comments

Interested persons may present data, information, or views orally or in writing on issues pending before the Committee. Please submit written comments to Michelle Atkinson, by email at *michelle.atkinson@cms.hhs.gov* or by mail to the Executive Secretary for MCAC, Coverage and Analysis Group, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C1–09–06, Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces a public meeting of the Committee.

Meeting Topic: The Committee will discuss evidence, hear presentations and public comment, and make recommendations regarding vertebral body compression fractures. The MCAC will discuss scientific evidence on the effectiveness of vertebroplasty and kyphoplasty procedures in the Medicare population. Committee members will be given a presentation reviewing the current literature and also receive public comments to assist in the discussions and recommendations regarding the net health outcomes of vertebroplasty and kyphoplasty procedures.

Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.hhs.gov/coverage/*.

II. Procedure

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section and submit the following by the *Deadline for Presentations and Comments* date listed in the *Deadlines* section of this notice: A brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each Committee member before offering your public comments. Your presentation must address the questions asked by CMS to the Committee. The questions will be available on our Web site at *http://www.cms.hhs.gov/mcac/default.asp* meetings. If the specific questions are not addressed, your presentation will not be accepted. We request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15 minute unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

III. Registration Instructions

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting Maria Ellis at 410–786–0309, mailing address: Coverage and Analysis Group, OCSQ; Centers for Medicare & Medicaid Services; 7500 Security Blvd, Mailstop: C1–09–06; Baltimore, MD 21244, or by e-mail at *Mellis@cms.hhs.gov*. Please provide your name, address, organization, telephone and fax number, and e-mail address.

You will receive a registration confirmation with instructions for your arrival at the CMS complex. You will be notified if the seating capacity has been reached.

This meeting is located on Federal property; therefore, for security reasons, any individuals wishing to attend this meeting must register by close of business on May 16, 2005.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security.

In order to gain access to the building and grounds, individuals must present photographic identification to the Federal Protective Service or Guard Service personnel before being allowed entrance.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all individuals entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. CMS cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Parking permits and instructions will be issued upon arrival by the guards at the main entrance.

Note: *Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.* The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a). (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 9, 2005.

Sean R. Tunis,

Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 05–5594 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5033–N3]

Medicare Program; Meeting of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the second public meeting of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease (ESRD) Services. Notice of this meeting is required by the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Advisory Board will provide advice and recommendations with respect to the establishment and operation of the demonstration mandated by section 623(e) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

DATES: The meeting is on April 13, 2005 from 9 a.m. to 5 p.m., eastern standard time.

Special Accomodations: Persons attending the meeting who are hearing or visually impaired or have a condition that requires special assistance or accommodations are asked to notify Pamela Kelly by April 6, 2005 by e-mail at *ESRDAdvisoryBoard@cms.hhs.gov* or by telephone at (410) 786–2461.

ADDRESSES: The meeting will be held at the Hyatt Regency, 300 Light Street, Baltimore, MD 21202.

Attendance is limited to the space available, so seating will be on a first come, first served basis.

Web site: Up-to-date information on this meeting is located at *http://www.cms.hhs.gov/faca/esrd*.

Hotline: Up-to-date information on this meeting is located on the CMS Advisory Committee Hotline at 1 (877) 449–5659 (toll free) or in the Baltimore area at (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Pamela Kelly by e-mail at *ESRDAdvisoryBoard@cms.hhs.gov* or telephone at (410) 786–2461.

SUPPLEMENTARY INFORMATION: On June 2, 2004, we published a **Federal Register** notice requesting nominations for individuals to serve on the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease (ESRD) Services. The June 2, 2004 notice also announced the establishment of the Advisory Board and the signing by the Secretary on May 11, 2004 of the charter establishing the Advisory Board. On January 28, 2005, we published a **Federal Register** notice (70 FR 4132) announcing the appointment of eleven individuals to serve as members of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services, including one individual to serve as co-chairperson, and one additional co-chairperson, who is employed by CMS. The first public meeting of the Advisory Board was held on February 16, 2005. This notice announces the second public meeting of this Advisory Board.

I. Topics of the Advisory Board Meeting

The Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services will study and make recommendations on the following issues:

- The drugs, biologicals, and clinical laboratory tests to be bundled into the demonstration payment rates.
- The method and approach to be used for the patient characteristics to be included in the fully case-mix adjusted demonstration payment system.
- The manner in which payment for bundled services provided by non-demonstration providers should be handled for beneficiaries participating in the demonstration.
- The feasibility of providing financial incentives and penalties to organizations operating under the demonstration that meet or fail to meet applicable quality standards.
- The specific quality standards to be used.
- The feasibility of using disease management techniques to improve quality and patient satisfaction and reduce costs of care for the beneficiaries participating in the demonstration.
- The selection criteria for demonstration organizations.

II. Procedure and Agenda of the Advisory Board Meeting

This meeting is open to the public. The Advisory Board will hear background presentations from CMS. The Advisory Board will then deliberate openly on the general topic and will make recommendations on specific topics for future meetings. The Advisory Board will also allow a 30-minute opportunity for public remarks or presentations. Interested parties may speak or ask questions during this time. Comments may be limited by the time available. Written questions should be submitted by April 6, 2005 to *ESRDAdvisoryBoard@cms.hhs.gov*. Parties may also submit written comments following the meeting to the contact listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 5 U.S.C. App. 2, section 10(a). (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 10, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–5920 Filed 3–24–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Coordinating Center To Support State Incentive Grants To Build Capacity for Alternatives to Restraint and Seclusion—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health

Services has funded a Coordinating Center to Support State Incentive Grants to Build Capacity for Alternatives to Restraint and Seclusion. The grants are designed to promote the implementation and evaluation of best practice approaches to reducing the use of restraint and seclusion in mental health facilities. Grantees consist of 8 sites (state mental health agencies), most of which will be implementing interventions in multiple facilities (a total of 76 facilities). These include facilities serving adults and those serving children and/or adolescents, with various subgroups such as forensic and sexual offender populations.

With input from multiple experts in the field of restraint and seclusion and alternatives to restraint and seclusion, the project created a common core of data collection instruments that will be used for this cross-site project. The facilities will complete four different instruments: (1) Facility/Program Characteristics Inventory (information about type of facilities, characteristics of persons served, staffing patterns, and unit specific data); (2) Inventory of Seclusion and Restraint Reduction Interventions; (3) Treatment Episode Data (admission data for all clients/patients); and (4) Event Data (data about the use of restraint and seclusion). Data will be submitted by the sites electronically via a secured Web site. The Facility/Program Characteristic Inventory and Inventory of Seclusion and Restraint Reduction Intervention will be collected annually. The Treatment Episode Data and Event Data will be collected monthly.

The resulting data will help to identify the: (1) Number of programs adopting best practices involving alternative approaches to restraint and seclusion; and (2) program's impact of reducing restraint and seclusion use and adoption of alternative practices. The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/response (hours)	Annual burden (hours)
Facility/Program Characteristic Inventory	76	1	4	304
Inventory Of Seclusion And Restraint Reduction Interventions	76	1	2	152
Treatment Episode Data	76	12	8	7,296
Event Data	76	12	8	7,296
Total	76			15,048

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by May 24, 2005.

Dated: March 21, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–5914 Filed 3–24–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: March 25, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 18, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–5786 Filed 3–24–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0101; Monitoring Recovered Species After Delisting As Required Under Section 4(g) of the Endangered Species Act—American Peregrine Falcon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The American peregrine falcon was removed from the List of Endangered and Threatened Wildlife on August 25, 1999. Section 4(g) of the Endangered Species Act (ESA) requires that all species that are recovered and removed from the List of Endangered and Threatened Wildlife (delisted) be monitored in cooperation with the States for a period of not less than 5 years. The purpose of this requirement is to detect any failure of a recovered species to sustain itself without the protections of the ESA. We (Fish and Wildlife Service) have submitted the collection of information described below to OMB for renewal under the provisions of the Paperwork Reduction Act of 1995.

DATES: You must submit comments on or before April 25, 2005.

ADDRESSES: Send your comments on this information collection requirement

to the Desk Officer for the Department of the Interior at OMB–OIRA via fax at (202) 395–6566, or via e-mail at *OIRA_DOCKET@omb.eop.gov.* Also, please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 222–ARLSQ, Arlington, Virginia 22203 (mail); (703) 358–2269 (fax); or *Hope_Grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the proposed information collection requirement, related forms, or explanatory material, contact Hope Grey at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). Currently we have approval from OMB to collect information on the American peregrine falcon under OMB control number 1018–0101. This approval expires on March 31, 2005. We have submitted a request to OMB to renew approval of the information collection included in the ''Monitoring Plan for the American Peregrine Falcon: A Species Recovered under the Endangered Species Act'' (Monitoring Plan) (USFWS 2003). The monitoring plan is available on our Web site at *http://endangered.fws.gov/recovery/peregrine/plan2003.pdf.* We are requesting a 3-year term of approval for this information collection. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has up to 60 days to approve or disapprove our information collection request, but may respond after 30 days. Therefore, to ensure that your comments receive consideration, send all comments and suggestions to OMB by the date listed in the **DATES** section.

We published a 60-day notice on this information collection renewal in the **Federal Register** on January 3, 2005 (70 FR 101) inviting public comment. In addition to publishing a **Federal Register** notice, we contacted seven non-Federal biologists who have used the forms previously and asked them to review each of the three forms associated with peregrine falcon monitoring and to comment on the clarity and relevance of the information collection, the burden associated with the collection, and whether there is something we could do to minimize the burden. We received a total of 10 comments, including three comments on the **Federal Register** notice.

We received one comment from an individual and comments from two States on the **Federal Register** notice. The individual did not express an opinion on the information collection itself, but took issue with the original delisting of peregrine falcons in 1999. One State supported the collection of American peregrine falcon monitoring data and stated that the information will have tremendous practical utility for both the State and the Service. That State supports the submission of forms via e-mail and also agreed with our burden estimates for completing the monitoring forms, but commented that the data collection itself could take more than 1 day. The other State commented that we should request OMB approval for the entire time frame needed for peregrine monitoring (until 2015) rather than submit several requests. This is not an option. By law, OMB can grant approval of information collections for a maximum of 3 years. That State was also concerned that, while the burden hours for completion of the forms was accurate, the Service does not account for the time necessary to locate, access, and monitor falcon eyries. The State recommended that we reevaluate the estimate of burden to incorporate these important aspects of monitoring and data collection. In response, we have included burden estimates for the time required to visit nest sites and record the data. The State also recommended that we account for the extra time it takes to collect contaminants samples. We did not include that estimate in the burden hours, because collecting contaminants samples is done opportunistically, in conjunction with some other activity at the nest site. It is rarely, if ever, the primary reason for visiting a nest. However, we have included the time it takes to process the contaminants samples.

The comments we received from our outreach effort were generally favorable and included some helpful suggestions for improving the forms. The commenters estimated the burden hours for completing the monitoring forms to be less than the hours we previously estimated.

Post-delisting monitoring, required by the ESA, tracks population trends of recovered species. Data for American peregrine falcons are collected by and reported back to professional biologists and volunteers according to the monitoring plan. Contaminants monitoring is included as part of the post-delisting monitoring for peregrine falcons because they are sensitive to contaminants in the environment, and contaminants could cause population declines in the future. Contaminants monitoring involves collection of addled eggs found in nests and parts of feathers from nestlings.

The Regional Migratory Birds and Habitat Programs and the Endangered Species offices use the information provided in the three monitoring forms (3–2307, 3–2308, and 3–2309) to track measures of reproductive success and levels of contaminants in American peregrine falcons. The nest monitoring data is reported on a 3-year interval, after each monitoring year. The contaminants monitoring is opportunistic, with sample size goals to be reached every 5 years. The results of contaminants monitoring will be reported after each 5-year interval. If we do not collect this data, we could not satisfy our responsibilities under the delisting monitoring requirements of section 4(g) of the Endangered Species Act (ESA) (16 U.S.C. 1533g).

Title: Monitoring Recovered Species After Delisting As Required Under Section 4(g) of the Endangered Species Act—American Peregrine Falcon.

Approval Number: 1018–0101.

Form Numbers: 3–2307, 3–2308, and 3–2309.

Frequency of Collection: 3–2307 (every 3 years); 3–2308 and 3–2309 (annually).

Description of Respondents: Individuals, not-for-profit institutions, Federal Government, States, tribes, and local governments

Monitoring forms	Total annual responses	Average burden hours per respondent	Annual burden hours
3–2307—Nest Monitoring Form (filling out the form)	494	0.25	123.5
3–2307—Nest Monitoring Form (collecting the data)		10	4,940
3–2308—Egg Contaminant Sheet	12	1	12

Monitoring forms	Total annual responses	Average burden hours per respondent	Annual burden hours
3–2309—Feather Contaminant Sheet	12	.5	6
Total	518		5081.5

We again invite comments concerning this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of monitoring of recovered species as prescribed in section 4(g) of the ESA, including whether or not the information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information for 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; and (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program will be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: March 21, 2005.

Hope Grey

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–5955 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–5420–EU–L027; FF–094263]

Notice of Applications for Recordable Disclaimers of Interest for Lands Underlying Salcha River in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State of Alaska has filed an application for a recordable disclaimer of interest in certain lands underlying the Salcha River by the United States.

DATES: Comments on the State of Alaska's applications should be submitted on or before June 23, 2005. Interested parties may submit comments on the BLM Draft Navigability Reports on or before May 24, 2005.

ADDRESSES: Comments should be sent to the Chief, Branch of Lands and Realty, BLM Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Callie Webber at (907) 271–3167 or Mike Brown at (907) 271–3602 or you may visit the BLM recordable disclaimer of interest Web site at *http://www.ak.blm.gov/.*

SUPPLEMENTARY INFORMATION: On May 12, 2004, the State of Alaska filed applications for recordable disclaimers of interest pursuant to Section 315 of the Federal Land Policy and Management Act and the regulations contained in 43 CFR subpart 1864 for lands underlying Salcha River (FF–094263). A recordable disclaimer of interest, if issued, will confirm the United States has no valid interest in the subject lands. The notice is intended to notify the public of the pending applications and the State's grounds for supporting it. The State asserts that this river is navigable; therefore, under the Equal Footing Doctrine and Submerged Lands Act of 1953, ownership of these lands underlying the rivers automatically passed from the United States to the State at the time of statehood in 1959.

The State's application (FF–094263) is for the bed of the Salcha River and all interconnecting sloughs between the ordinary high water lines of the left and right banks from origins within T. 3 N., R. 19 E., Fairbanks Meridian (FM), Alaska, downstream approximately 125 miles SW to confluence with the Tanana River at T. 5 S., R. 4 E., FM. The State did not identify any known adverse claimant or occupant of the affected lands.

A final decision on the merits of the applications will not be made before June 23, 2005. During the 90-day period, interested parties may comment upon the State's application, AA–085446, and supporting evidence. Interested parties may comment on the evidentiary evidence presented in the BLM's Draft Navigability Reports on or before May 24, 2005.

Comments, including names and street addresses of commenters, will be available for public review at the Alaska State Office (see address above), during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: March 18, 2005.

Carolyn Spoon,

Chief, Branch of Lands and Realty.

[FR Doc. 05–5911 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–04–1990–EX]

Notice of Availability for the Emigrant Mine Project Plan of Operations Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, 43 CFR part 3809, and the Federal Land Policy and Management Act (FLPMA), the Bureau of Land Management (BLM) Elko Field Office has prepared, with the assistance of a third-party contractor, a DEIS for the Newmont Mining Corporation's proposed Plan of Operations for the Emigrant Mine Project located in northeastern Nevada.

DATES: Written comments on the DEIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. An Open-House Public Meeting will be held at the Bureau of Land Management Elko Field Office at 3900 E. Idaho Street, Elko, Nevada. The date and time of this public meeting will be announced through public notices, media news releases and/or mailing. This meeting will be scheduled no sooner than 15 days following the publication of this notice.

ADDRESSES: Written comments may be sent to the Elko Field Office by any of the following methods: Mail: Send to

the Attention of the Emigrant Project Manager, BLM Elko Field Office, 3900 East Idaho Street, Elko, NV 89801. E-mail: *tschmidt@nv.blm.gov.* Fax: (775) 753–0255.

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours, Monday–Friday, except holidays, and may be published as part of the final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests to withhold your name or street address from public review will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. The DEIS is available for review at the Elko Field Office during regular business hours, 3900 E. Idaho Street, Elko, NV, and on the Elko Field Office Internet site at *http://www.nv.blm.gov/elko.*

FOR FURTHER INFORMATION CONTACT: Tom Schmidt, Emigrant Project Manager at the Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0200. E-mail: *tschmidt@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The Newmont Mining Corporation has submitted a Plan of Operations to open the Emigrant Mine about ten miles south of Carlin, Nevada. The mine and associated facilities would be located in portions of Sections 24, 26, 34, 36 of T. 32 N., R. 53 E.; and Sections 1, 2, 3, 11, 12, T. 31 N., R 53 E. The proposed Emigrant Mine would include developing and operating an open pit mine; constructing a waste rock disposal facility, storing oxide waste in mined out areas of the pit; developing an oxide heap leach pad; constructing ancillary facilities; rerouting intermittent stream and flows in the pit area; and concurrent reclamation. Proposed mining operations would last for approximately 9 years through the year 2014. Approximately 1172 acres of public land and 260 acres of private land would be disturbed.

The issues analyzed in the DEIS include potential impacts to wildlife and cultural resources; the potential for waste rock, heap leach, and pit walls to produce acid rock drainage or heavy metals; and diversion of an unnamed drainage. Cumulative impacts are also addressed. The following resources are also analyzed in the DEIS: Geology and minerals, Native American religious concerns, air and water quality, paleontology, lands and realty, fisheries, aquatic and riparian resources, range management, vegetation, soils, visual resources, recreation, wilderness, weeds, social and economic values, environmental justice, and threatened, endangered, candidate, and sensitive species.

A range of alternatives, (including, but not limited to, the no-action alternative), have been developed to address issues identified during scoping. Mitigating measures are considered in the DEIS to minimize environmental impacts and undue or unnecessary degradation of public lands.

Federal, State and local agencies and other individuals or organizations that may be interested in or affected by BLM's decision on the Emigrant Project Plan of Operations are invited to participate in the EIS process.

Dated: August 25, 2004.

Helen Hankins,

Field Office Manager.

Note: This document was received at the Office of the Federal Register on March 21, 2005.

[FR Doc. 05–5879 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Draft Resource Management Plan/Environmental Impact Statement for the Sloan Canyon National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

Cooperating Agencies: Nevada Department of Wildlife, Nevada State Historic Preservation Office, Clark County Department of Comprehensive Planning, City of Henderson, City of Boulder City, Las Vegas Paiute Tribe, Paiute Indian Tribe of Utah, Fort Mojave Indian Tribe.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, the Federal Land Policy and Management Act (FLPMA) of 1976, and the Clark County Conservation of Public Land and Natural Resources Act of 2002 (Clark County Act) (Pub. L. 107–282), the Bureau of Land Management (BLM) has prepared a Draft RMP/EIS to analyze alternative approaches to management of the Sloan Canyon National Conservation Area (NCA).

DATES: Written comments on the Draft Resource Management Program Environmental Impact Statement (RMP/EIS) will be accepted for 90 days following the date of publication of the Notice of Availability by the Environmental Protection Agency in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments by any of the following methods:

- Web site: *http://www.sloancanyon.org.*
- E-mail: *charles_carroll@nv.blm.gov.*
- Fax: (702) 515–5023 (Attn: Sloan Canyon NCA).
- Mail: Bureau of Land Management, Las Vegas Field Office, Attn: Sloan Canyon NCA, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

Individual respondents may request confidentiality. If you wish to withhold your name and street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations and businesses, will be available for public inspection in their entirety. Copies of the Draft RMP/EIS are available on the Web site and upon request. The Draft RMP/EIS is available for review at public information repositories (BLM Nevada State Office in Reno, Paseo Verde Library in Henderson, Boulder City Library in Boulder City, North Las Vegas Library—Main Branch in North Las Vegas, and Summerlin Library in Las Vegas), and at the BLM Las Vegas Field Office at the address above.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, visit the web site or contact: Charles Carroll, BLM Las Vegas Field Office, Telephone (702) 515–5000, and e-mail *charles_carroll@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: In November 2002 Congress designated the Sloan Canyon NCA to preserve and protect a portion of southern Nevada's Mojave Desert as a permanent asset for future generations. The Clark County

Act established both the Sloan Canyon NCA of 48,438 acres and the North McCullough Wilderness Area (14,763 acres entirely contained within the NCA), which are located southeast of the City of Las Vegas, adjacent to the City of Henderson in Clark County, Nevada. The Clark County Act requires the BLM to develop a plan for the appropriate use and management of the Sloan Canyon NCA and Wilderness within three years of enactment. The Draft RMP/EIS fulfills the needs and obligations set forth by NEPA, FLPMA, the Clark County Act, and BLM management policies described in the Las Vegas RMP of 1998. Upon completion, this RMP/EIS will amend the Las Vegas RMP regarding management of the 48,438 acres within Sloan Canyon NCA and North McCullough Wilderness Area. The management alternatives considered in the Draft RMP/EIS include: Continuing current management practices (no action alternative), an alternative that emphasizes natural character, one that allows moderate developed use while maintaining natural character, and another that emphasizes developed uses. The no action alternative is required by NEPA, and would continue current management as described in the Las Vegas RMP, in conjunction with the requirements of the Clark County Act. The alternatives contain both land use planning decisions and implementing decisions to provide planning structure to facilitate management of the Sloan Canyon NCA. The analysis of the alternatives includes an evaluation of indirect, direct, and cumulative impacts.

Major resources and activities addressed in the Draft RMP/EIS include: Recreation, the North McCullough Wilderness Area, cultural resources, special designations, visual resources, interpretation, facilities, lands and realty, transportation, vegetation management, wildlife management, wildland fire management, water resources and quality, air quality, livestock grazing, geology and soils, minerals, abandoned mines, hazardous materials, and socioeconomics and environmental justice.

Dated: January 10, 2005.

Helen Hankins,

Field Manager, Las Vegas.

[FR Doc. 05–5880 Filed 3–24–05; 8:45 am]

BILLING CODE 5865–DP–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1610–DO–015F]

Notice of Intent To Prepare a Resource Management Plan (RMP) and Associated Environmental Impact Statement (EIS) and Initiate the Public Scoping Process

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Winnemucca Field Office (WFO), Nevada, is initiating a planning effort to prepare the Winnemucca RMP and associated EIS. The RMP would replace the existing 1982 Sonoma-Gerlach and Paradise-Denio Management Framework Plans and one land use plan amendment titled the ''Paradise-Denio and Sonoma-Gerlach Management Framework Plan-Lands Amendment (Jan. 1999).''

DATES: The scoping comment period will commence with the publication of this notice and will end on May 24, 2005. However, collaboration with the public will continue throughout the planning process. Public meetings will be announced through the local news media, newsletters, and a BLM Web site at least 15 days prior to the event. Comments on issues and planning criteria should be received on or before the end of the scoping period at the address listed below.

ADDRESSES: Written comments should be sent to the Winnemucca Field Office, Bureau of Land Management, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445 or via fax at (775) 623–1503. Comments, including names and addresses of respondents, will be available for public review at the BLM WFO, during regular hours 7:30 a.m.–4:30 p.m., Monday–Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jeff Johnson, Project Lead, Telephone (775) 623–1500.

SUPPLEMENTARY INFORMATION: The purpose of the public scoping process is to identify issues that should be considered in the RMP/EIS and to initiate public participation in the planning process. BLM personnel will also be present at scoping meetings to explain the planning process and other requirements for preparing the RMP/EIS.

The planning area includes lands within the BLM WFO administrative boundary. The WFO RMP decision area encompasses about 7.1 million acres of public lands, which are located within Humboldt, Pershing, Lyon, Churchill and Washoe Counties, Nevada. The decision area includes public lands administered by the BLM WFO, and does not include private lands, state lands, tribal trust lands, federal lands not administered by the BLM, and lands located within the planning area of the RMP for the Black Rock Desert—High Rock Canyon Emigrant Trails National Conservation Area, associated Wilderness Areas, and other contiguous lands.

The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA) and associated Council of Environmental Quality Regulations 40 CFR part 1500. The plan also fulfills requirements of the Federal Land Policy and Management Act (FLPMA: 43 U.S.C. 1711), applicable planning regulations at 43 CFR part 1600, and BLM management policies.

The BLM WFO will work collaboratively with interested parties to identify the management actions and decisions that are best suited to local, regional, and national needs and concerns of the public, subject to planning criteria to be developed to guide the plan. Preliminary issues and management concerns have been identified by the BLM, other agencies, and meetings with individuals and user groups. The major issue themes to be addressed in the RMP effort include:

- Management and protection of public land resources while allowing for multiple uses.
- Management of riparian areas and water quality concerns.
- Recreation/visitor use and safety management.
- Travel management, including Off Highway Vehicle.
- Management of areas with special values.
- Energy and minerals management.
- Management of wildlife habitat including protection of sensitive species habitat.

- Land Tenure Adjustments.

After gathering public comments, issues will be placed in one of three categories.

1. Issues to be resolved by the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, outdoor recreation, archaeology, paleontology, wildlife, fisheries, wild horse & burro, weeds, lands and realty, hydrology, soils, engineering, fire, wilderness, hazardous materials, and social and economic. The BLM has identified some preliminary planning criteria to guide the development of the plan. The following planning criteria have been proposed to guide the development of the plan, to avoid unnecessary data collection and analyses, and to ensure the plan is tailored to issues. Other criteria may be identified during the public scoping process. Proposed planning criteria include the following:

- The plan will comply with all applicable laws, regulations and current policies.
- Broad-based public participation will be an integral part of the planning and EIS process.
- The plan will recognize valid existing rights.
- Areas with special designations as appropriate.

Dated: December 16, 2004.

Vicki L. Wood,

Acting Field Manager.

[FR Doc. 05–2632 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–5882–PH–EE01; HAG–05–0088]

Meeting Notice

AGENCY: Bureau of Land Management.

ACTION: Meeting notice for the Eugene District, Bureau of Land Management (BLM) Resource Advisory Committees under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (P.L. 106–393).

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Eugene District BLM Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Pub. L. 106–393 (the Act). Topics to be discussed by the BLM Resource Advisory Committee include selection of a chairperson, public forum and proposed projects for funding in ''Round 5, FY 06'' under Title II of the Act.

DATES: The BLM Resource Advisory Committees will meet on the following dates: The Eugene Resource Advisory Committee will meet at the BLM Eugene District Office, 2890 Chad Drive, Eugene, Oregon 97440, 9 a.m. to 4:30 p.m., on June 16, 2005 and 9 a.m. to 4:30 p.m., on July 21, 2005. The public forum will be held from 12:30–1 p.m. on both days.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the BLM Resource Advisory Committees may be obtained from Wayne Elliott, Designated Federal Official, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440, (541) 683–6600, or *wayne_elliott@or.blm.gov.*

Dated: March 17, 2005.

Mark Buckbee,

Acting Eugene District Manager.

[FR Doc. 05–5912 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–05–1320–BJ]

Notice of Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on March 15, 2005.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the corrective dependent resurvey of a portion of the subdivisional lines, Township 17 North, Range 94 West, Sixth Principal Meridian, Wyoming, was accepted March 15, 2005.

The plat and field notes representing the dependent resurvey of a portion of the Thirteenth Standard Parallel North, through Range 76 West, a portion of the Ninth Auxiliary Meridian West, through Township 52 North, between Ranges 76 and 77 West, a portion of the south boundary, and the subdivisional lines, Township 52 North, Range 76 West, Sixth Principal Meridian, Wyoming, was accepted March 15, 2005.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: March 15, 2005.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 05–5910 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070B (Final)]

Certain Tissue Paper Products From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of tissue paper,[2] provided for in subheadings 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; and 9505.90.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[3] The Commission makes a negative finding with respect to critical circumstances.[4]

Background

The Commission instituted this investigation effective February 17, 2004, following receipt of a petition filed with the Commission and Commerce by Seaman Paper Company of Massachusetts, Inc.; American Crepe Corporation; Eagle Tissue LLC; Flower City Tissue Mills Co.; Garlock Printing & Converting, Inc.; Paper Service Ltd.; Putney Paper Co., Ltd.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL–CIO, CLC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of tissue paper from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 8, 2004 (69 FR 60423), subsequently revised on November 15, 2004 (69 FR 65632). The hearing was held in Washington, DC, on December 9, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 21, 2005. The views of the Commission are contained in USITC Publication 3758 (March 2005), entitled Certain Tissue Paper Products from China: Investigation No. 731–TA–1070B (Final).

Issued: March 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–5877 Filed 3–24–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Tissue paper as defined by Commerce in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 7475, February 14, 2005. The tissue paper products subject to investigation are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. ''Consumer'' tissue paper is sold packaged for retail sale to consumers; ''bulk'' tissue paper is typically used by businesses as a wrap to protect customer purchases.

[3] Vice Chairman Deanna Tanner Okun, Commissioner Marcia E. Miller, and Commissioner Daniel R. Pearson find two domestic like products in this investigation—consumer tissue paper and bulk tissue paper. They determine that an industry in the United States is materially injured by reason of imports of bulk tissue paper from China. They also determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports of consumer tissue paper from China.

[4] Vice Chairman Deanna Tanner Okun, Commissioner Marcia E. Miller, and Commissioner Daniel R. Pearson make a negative finding with respect to critical circumstances for bulk tissue paper.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Airborne Law Enforcement Accreditation Commission, Inc.

Notice is hereby given that, on February 9, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Airborne Law Enforcement Accreditation Commission, Inc. (''ALEAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Airborne Law Enforcement Accreditation Commission, Inc., Lakeside, CA. The nature and scope of ALEAC's standards development activities are: to develop administrative, operational safety standards for law enforcement aviation units.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–5888 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Flexible Display Center at Arizona State University

Notice is hereby given that, on March 3, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Flexible Display Center at Arizona State University (''Center'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Abbie Gregg, Inc., Tempe, AZ; Arizona State University, Tempe, AZ; E Ink Corporation, Cambridge, MA; Kent Display Systems, Inc., Kent, OH; EV Group, Tempe, AZ; Honeywell, Phoenix, AZ; Ito America, Tokyo, JAPAN; Corning, Corning NY; Universal Display Corporation, Ewing, NJ; and US Display Consotrium, San Jose, CA.

The general area of Center's planned activity are: (a) To establish a Center at Arizona State University to foster the development of leading-edge flexible display technology research, development and technology demonstrator manufacturing; (b) to strategically deploy focused intellectual, physical, financial and management

resources to dramatically accelerate advances in full color flexible display technology for commercial purposes; (c) to catalyze the growth of a vibrant flexible display industry; (d) to spearhead the effort of the U.S. Army to provide the war fighter with ubiquitous conformal and flexible displays that are lightweight, rugged, low power, and low cost, and which will significantly enhance a soldier's situational and operational effectiveness; and (e) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above. The parties intend to share intellectual property that is contributed and any intellectual property that is developed through the Center among themselves and the Center in accordance with the Participation Agreement among the parties.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–5885 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—BIFMA International

Notice is hereby give that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BIFMA International (''BIFMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: BIFMA International, Grand Rapids, MI. The nature and scope of BIFMA's standards development activities are: BIFMA develops safety and performance standards for office furniture products, *e.g.,* desks, seating, files, other storage units and panel systems. The purpose of the standards developed by BIFMA is to provide a minimum acceptable level of safety and some assurance of product quality. The standards describe the specific tests that must be conducted and the level of performance that must be achieved for a product to be in compliance with the standard. The standards developed by BIFMA are reviewed and updated every five years.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–5886 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc

Notice is hereby given that, on February 17, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Westman Communications Group, Brandon, Manitoba, CANADA; Atlantic Broadband LLC, Quincy, MA; and Campbell River TV, Campbell River, British Columbia, CANADA have been added as parties to this venture.

In addition, the memberships of Shaw Communications Inc., Calgary, Alberta, CANADA; and Vidéotron Ltée, Montreal, Quebec, CANADA, have been registered.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notification disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on August 24, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 4, 2004 (69 FR 59267).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–5890 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Community Associations Institute

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Community Associations Institute (''CAI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Community Associations Institute, Alexandria, VA. The nature and scope of CAI's standards development activities are: To award qualified professionals who have met established standards with a range of designations in order to improve the quality and effectiveness of community management, community association management companies, reserve professionals and insurance professionals serving community associations.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–5887 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Glass Manufacturing Industry Council—The Next Generation Melter Consortium

Notice is hereby given that, on February 10, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Glass Manufacturing Industry Council—The Next Generation Melter Consortium (''GMIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Corning Incorporated, Corning, NY; Owens Corning Corporation, Granville, OH; PPG Industries, Inc., Pittsburgh, PA; SCHOTT North America, Inc., Duryea, PA; Johns Manville Corporation, Littleton, Co; Gas Technology Institute, Des Plains, IL; and Glass Manufacturing Industry Council, Westerville, OH. The general area of GMIC's planned activity is to develop and demonstrate a next generation glass melter using a submerged burner, called steel wall glass melter (NGMS).

Dorothy B. Fountain,

Deputy Director Director of Operations, Antitrust Division.

[FR Doc. 05–5891 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on January 21, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Telemanagement Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 7th Catalyst, Inc., Toronto, Ontario, CANADA; Agilance, Inc., Outremont, Quebec, CANADA; AMT Group, Moscow RUSSIA; ASPOne, Chicago, IL; Avisto Telecom SARL, Vallauris, FRANCE; Axon Solutions Ltd., Egham, Surrey, UNITED KINGDOM; Billing College, Teaneck, NJ; BOC Iberica, Madrid, SPAIN; Business Computer Center, St. Petersburg, RUSSIA; Cherrysoft Technologies Limited, GUNIDY/Chennai, TamilNadu, INDIA; ClickSoftware, Inc., Burlington, MA; Cognera Ltd., Natanya, ISRAEL; Croucher Consultants Ltd., Pease Pottage, West Sussex, UNITED KINGDOM; Defense Information Systems Agency, Fort Monmouth, NJ; DigitalFuel, San Mateo, CA; DMR Consulting Group, Chile S.A., Comuna De La Condes, Santiago De Chile, CHILE; DST Innovis, El Dorado Hills, CA; DynamicCity, Lindon, UT; ECSi, Thorurhill, Ontario, CANADA; Ernst & Young Audit Sp. z.o.o., Warszawa, POLAND, EXIS I.T., Athens, GREECE; FBS, Ipswich, Suffolk, UNITED KINGDOM; Gamma Projects, Monmouthshire, South Wales, UNITED KINGDOM; General Post and Telecommunication Company, London, UNITED KINGDOM; Guoxin Lucent Technologies Network Technologies Co., Ltd., Pudong, Shanghai, PEOPLES REPUBLIC OF CHINA; Heerklotz GmbH, Olching, GERMANY; HIKESIYA Co., Ltd., Yokohama City, Kanagawa, JAPAN; ICE systems d.o.o., Slatina, CROATIA; Inet Technologies, Inc., Richardson, TX; InferData, Mountain View, CA; InfoRoad AB, Uppsala, SWEDEN; Invocom Limited, Reading, Berkshire, UNITED KINGDOM; Ipanema Technologies, Fontenay aux Roses, FRANCE; Japan Cable and Telecommunications Association, Nishigotanda, Shinagawa-ku, Tokyo, JAPAN; Johns Hopkins University Applied Physics Lab, Laurel, MD; LG Telecom, Seoul, REPUBLIC OF KOREA; Matav Hungarian Telecom Company Ltd., Budapest, HUNGARY; MCI, Colorado Springs, CO; MDAPCE, Colorado Springs, CO; Meriton Networks, Ottawa, Ontario, CANADA; Mobile Cohesion Ltd., Belfast, County Antrim, UNITED KINGDOM; Nihon Unisys, Ltd., Tokyo, JAPAN; Object Management Group, Needham, MA; OJ & Builders Corp., Miami, FL; Open Telecommunications Limited, Melbourne, Victoria, AUSTRALIA; Openet Telecom, Dublin, IRELAND; OSS Observer, Durham, NH; Pannon GSM, Budaors, HUNGARY; Pantero Corp., Waltham, MA; Pedestal Networks, Fremont, CA; Pelagic Group, Singapore, SINGAPORE; Pivetal, Southampton, FRANCE; Portal Software, Inc., Cupertino, CA; Praesidium Services Ltd., Reading, Berkshire, UNITED KINGDOM; QoSmetrics, Massy, FRANCE; Raptor Networks Technologies, Santa Ana, CA; Rodopi Software, San Diego, CA; Rogers Communications Inc., Toronto, Ontario, CANADA; RosettaNet, Santa Ana, CA; Royah Company, Jeddah, SAUDI ARABIA; Royal KPN N.V., Den Haag, GA, THE NETHERLANDS; S&T, Austria GMGH, Vienna, AUSTRIA; Service Management Alliance, Bellevue, WA; SESI, London, UNITED KINGDOM; Simpler Networks, Inc., Dorval, Quebec, CANADA; SITA, Cointrin, Geneva, SWITZERLAND; SunTec Business Solutions Pvt Ltd., Thiruvananthapuram, Kerala, INDIA; Suntech Sp. z.o.o., Warsaw, POLAND; Tata Consultancy Services, Taramani Chennai, INDIA; TechOne, Inc., Oakland, CA; TelcoPro Limited, Castlebar, County Mayo, IRELAND; Telecommunications Division, Sacramento, CA; Telekom Slovenije, Ljubljana, SLOVENIA; TICO GmGH, Weininger, CH, SWITZERLAND; TideStone Software (Shanghai) Corp., Shanghai, PEOPLES REPUBLIC OF CHINA, CHINA; T-Mobile (UK), Hatfield, Hertfordshire, UNITED KINGDOM; and Tonex, Inc., Richardson, TX have been added as parties to this venture.

Also, Actix, Inc., Hammersmith, London, UNITED KINGDOM; Bauer & Partner AG, The Business and Technology Group Europe, Neuss, GERMANY; City of Toronto, Toronto, Ontario, CANADA; Coriolis Networks, Boxboro, MA; Elematics, Portland, OR; Java Wireless Competency Centre, Singapore, SINGAPORE; Joule Software, Inc., Austin, TX; JT Venture Partners, Denville, NJ; Mapinfo, Windsor, Berkshire, UNITED KINGDOM; NDLO/CIS, Baerum, Postterminal, NORWAY; Panduit Corporation, Tinley Park, IL; Polaris Networks, San Jose, CA; SAIC Limited, London, UNITED KINGDOM; Solid, Mt. View, CA; Tecnosistemi Spa Tlc Engineering & Services, Rozzano, Milanofiori, ITALY; TIBCO Talarian, Inc., Palo Alto, CA; University College London, Bath, Avon, UNITED KINGDOM; and VPI Systems, Inc., Berlin, GERMANY have withdrawn as parties to this venture.

The following members have changed their names: Anseres Consulting & Projectmanagement has changed its name to Anseres Consulting & Project Management, Rendsburg, GERMANY; Comparex Africa has changed its name

to Business Connexion (Pty) Ltd., Halfway House, Gauteng, SOUTH AFRICA; GE Network Solutions has changed its name to GE Energy, Chesterton, Cambridge, UNITED KINGDOM; n Tels Co., Ltd. has changed its name to nTels Co., Ltd., Short Hills, NJ; SMA (Service Management Alliance) has changed its name to Service Management Alliance, Bellevue, WA; Staffware has changed its name to Tibco Software, Maidenhead, Berkshire, UNITED KINGDOM; Westel Mobile Company has changed its name to T-Mobile Hungary Communications Company Limited by Shares, Budapest, HUNGARY; and St. Paul Venture Capital has changed its name to Vesbridge Partners, Minneapolis, MN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on June 24, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 18, 2004 (69 FR 51329).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–5892 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Underwriters Laboratories Inc.

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Underwriters Laboratories Inc. (''UL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Underwriters Laboratories Inc., Northbrook, IL. The nature and scope of UL's standards development activities are: development of UL Standards of Safety, which incorporate safety requirements for evaluating equipment, materials, components, products, systems, or services and address safety issues related to fire, electric shock, personal injury, and, in certain cases, environmental and public health. UL is accredited by the American National Standards Institute to develop National Standards.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–5889 Filed 3–24–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act—Small Grassroots Organizations Connecting With the One-Stop Delivery System

Announcement Type: New—Notice of Solicitation for Grant Application.

Funding Opportunity Number: SGA/DFA PY–04–03.

Catalog of Federal Domestic Assistance CFDA Number: 17.257.

Key Dates: Deadline for Application Receipt—April 28, 2005.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL) announces the availability of $1,000,000 to award grants to eligible ''grassroots'' organizations with the ability to connect to the local One-Stop delivery system. The term ''grassroots'' is defined under the Eligibility Criteria.

DATES: The closing date for receipt of applications under this announcement is April 28, 2005. Applications must be received no later than 5 p.m. (Eastern Time). Application and submission information is explained in detail in Section IV of this SGA.

Authorities: These grants are made under the following authorities:

- Wagner Peyser Act, 29 U.S.C. 49 *et seq.*
- The Workforce Investment Act of 1998, U.S.C. 2801 *et seq.*
- Workforce Investment Act Regulation codified at (20 CFR pts. 660–671)
- Exe. Order No. 13198, Agency responsibilities with respect to Faith-Based and Community Initiatives, 66 FR 8497 (Jan. 31, 2001)
- Training and Employment Guidance Letter 17–01, Incorporating and Utilizing Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs (2002)
- Exec. Order No. 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (Dec. 16, 2002)

SUPPLEMENTARY INFORMATION:

This solicitation consists of eight parts:

- Part I describes an overview of the funding opportunity
- Part II describes the size and nature of the award.
- Part III describes who qualifies as eligible applicants.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate applications for funding.
- Part VI provides award administration information.
- Part VII contains DOL agency contact information.
- Part VIII lists additional resources of interest to applicants.

I. Funding Opportunity Description

1. Overview of the WIA

The WIA established a comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, 29 U.S.C. 49 *et seq.* (1998), Adult Education and Literacy Act, 29 U.S.C. 9201 (1998), and the Rehabilitation Act., 29 U.S.C. 701 (1998). A number of other Federal programs are also identified as required partners in the One-Stop delivery system to provide comprehensive services for all Americans to access the information and resources available to help achieve their career goals. The intention of the One-Stop delivery system is to establish a network of programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation. There are currently over 1,900 comprehensive One Stop Centers and over 1,600 affiliated One Stop Centers across the United States. The WIA established

state and local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce investment system, and accorded significant authority to the nation's Governors and local chief elected officials to further implement innovative and comprehensive delivery systems. The vision, goals and objectives for workforce development under the WIA decentralized system are fully described in the state strategic plan required under Section 112 of the statute. This state strategic workforce investment plan—and the operational experience gained by all the partners to date in implementing the WIA-instituted reforms—help identify the important ''unmet needs'' and latent opportunities to expand access to One-Stop delivery systems by all the population segments within the local labor market.

2. Administration Strategy

Engagement of Faith-Based and Community Organizations Under the Workforce Investment Act. On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers for faith-based and community initiatives (CFBCI) in the Departments of Labor (DOL), Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), Justice (DOJ). President Bush charged the departmental centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community initiatives, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the CFBCI and ETA developed and issued SGAs to engage intermediary and grassroots organizations in our workforce system-building. These SGAs were designed to involve faith-based and community-based organizations in service delivery and to strengthen their existing partnership with the local One-Stop delivery system, while providing additional points of entry for customers into that system.

These 2002 grants embodied the Department's principal strategy for implementing the Executive Order by creating new avenues through which qualified organizations could participate more fully under the WIA, while applying their particular strengths and assets in providing services to our customers. These *solicitations* also proceeded from an ETA–CFBCI mutual premise that the involvement of community-based organizations and faith-based organizations can both complement and supplement the efforts of local workforce investment systems in being accessible to, and serving the training, job and career-support needs of, many of our citizens. Both ETA and CFBCI are committed to bringing new grassroots organizations to workforce system-building through the issuance of a new solicitation in 2005. This new solicitation draws on ''lessons learned'' in 2002, 2003 and 2004 while introducing several ''promising practices'' introduced by other ETA grantees. The new solicitation also places significant emphasis on performance outcomes—documenting and quantifying the additional value the grassroots organization brings to the One-Stop delivery system in the community.

Through this competition, ETA seeks to ensure that an important WIA tenet—universal access to the programs and services offered under WIA—is further rooted in the customer-responsive delivery systems already established by the Governors, local elected officials and local Workforce Investment Boards. ETA also reaffirms its continuing commitment to those customer-focused reforms instituted by state and local governments, which help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

Faith-based and community-based organizations present strong credentials for full partnership in our mutual system-building endeavors. Faith-based and community-based organizations are trusted institutions within our poorest neighborhoods. Faith-based and community-based organizations are home to a large number of volunteers who bring not only the transformational power of personal relationships to the provision of social service but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations strive to achieve some common purposes shared with government—reduction of welfare dependency, attainment of occupational skills, entry and retention of all our citizens in good-paying jobs. Through this solicitation, ETA and CFBCI strive to leverage these programs, resources and committed staff into the workforce investment strategies already embodied in state and local strategic plans.

3. Project Objectives

The selected grantees will be expected to achieve the following objectives:

- Help individuals enter employment with career opportunities or increase skills and education, both through (i) providing services such as education, pre- and post-job placement mentoring, life skills training, employability skills training, job coaching, and (ii) utilizing the services of the One-Stop Career Center.
- Expand the access of faith-based and community-based organizations' clients and customers to the training, job and career services offered by the local One-Stop Career Centers;
- Effectively maximize the dollars invested by leveraging volunteer and in-kind donations;
- Thoroughly document the impact and outcomes of these grant investments through quarterly and annual reporting; and
- Establish methods and mechanisms to ensure sustainability of these partnerships and participation levels beyond the life of the grant.

II. Award Information

1. Funding Availability and Period of Performance

ETA has identified $1,000,000 from the FY 2005 appropriation for One-Stop/America's Labor Market Information System. The agency expects to award approximately 40–50 grants. The grant amount for each grassroots organization is expected to range between $20,000 and $25,000. The period of performance will be 12 months from the date of execution by the Department.

2. Anticipated Announcement and Award Dates

Announcement of this award is expected to occur by June 30, 2005.

III. Eligibility Information

1. Eligible Applicants

For purposes of this announcement, eligible grassroots organizations must be non-profit organizations which:

- Have social services as a major part of their mission;
- Are headquartered in the local community to which they provide these services;
- (a) Have a social services budget of $350,000 or less, or (b) Have 6 or fewer full-time equivalent employees.

Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the Department's selection of grant recipients and must be employed by grantee recipients in the selection of sub-recipients.

The government is prohibited from providing direct financial assistance for inherently religious activity.* Therefore, as a general rule, awards may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities, and participation in such activities must be voluntary. (If, however, an organization receives financial assistance as a result of the choice of a beneficiary, such as through a voucher, the organization may integrate religion throughout its program).

*In this context, the term financial assistance that is provided directly by a government entity or an intermediate organization, as opposed to financial assistance that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' financial assistance may be used to refer to financial assistance that an organization receives directly from the Federal government (also known as ''discretionary'' assistance), as opposed to assistance that it receives from a state or local government (also known as ''indirect'' or ''block'' grant assistance). The term ''direct'' has the former meaning throughout this SGA.

2. Cost Sharing or Matching

This solicitation does not require grantees to share costs or provide matching funds.

3. Other Eligibility Requirements

Veterans Priority: In addition, this program is subject to the provisions of the Jobs for Veterans Act, Pub. L. 107–288, which provides priority of services to veterans and in some cases their spouses in all DOL funded job training programs. Please note that, to obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. The directive providing policy guidance on veterans' priority is available at *http://www.doleta.gov/programs/VETs/.*

IV. Application and Submission Information

1. Address To Request Application Package

This SGA contains all of the information and forms needed to apply for grant funding.

2. Content & Form of Application Submission

Applicants must submit one signed original and three copies of their proposal. *The Statement of Work must be limited to five (5) pages.* The only attachments permitted will be agreements with, or letters of support from, local Workforce Investment Boards and/or local One-Stop operators. The application must be double-spaced, and on single-sided, numbered pages. A font size of at least twelve (12) pitch is required with one-inch margins (top, bottom and sides.)

Required Contents

There are three required sections:

- Section I—Application for Federal Assistance (Standard Form SF–424)
- Section II—Budget Information (Standard Form SF–424A)
- Section III—Technical Proposal—Statement of Work

Section I—Application for Federal Assistance SF–424

Form SF–424 is included in the announcement as Appendix A. (also available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*). It must be signed by a representative authorized by the governing body of the applicant to enter into grant agreement. All applications are required to have a Dun and Bradstreet (DUNS) number recorded in item #5 of SF–424 (Rev. 9–2003). To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

Section II—Budget Information (SF–424A)

The budget information form SF–424A, is included in the announcement as Appendix B (also available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*).

The applicant must provide a concise narrative explanation to support its budget request.

Section III—Technical Proposal (Statement-of-Work)

(not to exceed 5 typed, double space pages)

The Statement of Work sets forth a strategic plan for the use of awarded funds and establishes measurable goals for increasing organizational participation in the One-Stop delivery system to serve more fully the clientele and members of community-based and faith-based organizations.

3. Submission Dates and Times

The closing date for receipt of applications under this announcement is April 28, 2005. Applications must be received at the address below no later than 5 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted. Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Marsha G. Daniels, Reference SGA/DFA PY04–03, 200 Constitution Avenue, NW., Room N–4438, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

Applicants may apply online at *http://www.grants.gov.* Any application received after the deadline will not be accepted. For applicants submitting electronic applications via Grants.gov, it is strongly recommended that you immediately initiate and complete the ''Get Started'' steps to register with Grants.gov at *http://www.grants.gov/GetStarted.* These steps will probably take multiple days to complete which should be factored in to your plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of your application.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it (a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by U.S. Postal Service Express Mail or Online to addressee not later than 5 p.m. at the place of mailing or electronic submission one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by U.S. Postal Service Express Mail in the event of any electronic submission problems. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on

both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

4. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

Administrative Costs: The primary use of the grant funds should be used to support the actual project. Therefore, applicants receiving grant funds under this solicitation may not use more than 10 percent of the amount of the grant for administrative costs associated with the project. Administrative costs are defined at 20 CFR 667.220.

Other Submission Requirements

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

1. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate grant proposals from Small Grassroots Organizations. Below are the required elements of the Statement of Work and the rating criteria that reviewers will use to evaluate the proposal.

A. Organizational History and Description of Community Need (15 points)

- Describe the structure of the applicant's organization. Describe the history of the organization in meeting community needs, and include a brief listing of services provided.
- Describe the overall community need. What services will your organization provide to address a need that the One-Stop Career Center is not fully addressing? (This description must include coverage of population(s) to be served and the services to be provided. Populations can include such groups as: ex-offenders, immigrants, limited English-speakers, veterans, victims of violent crime, homeless persons, and individuals with disabilities. Services can include, but are not limited to such activities as: education, pre and post job placement mentoring, life skills training, employability skills training, and job coaching. Other populations and services can be identified.)

Scoring of this criterion will be based on the following.

1. Does the description reflect a clear understanding of a community need? (15 points)

B. Description of Partnerships and Linkages (20 points)

- Please describe your plans to work as a partner with the One-Stop delivery system to help the target population you described above, enter and succeed in the workforce. If you have not previously worked with a One-Stop Career Center, please describe actions you have taken to develop a relationship with a One-Stop Career Center. If you have worked with a One-Stop Career Center in the past, please describe what actions you have taken to further develop your relationship. Please attach agreements with, or letters of support from, local Workforce Investment Boards and/or local One-Stop operators with whom you are working, or with whom you have developed a relationship, as you have designed this proposal.
- Please describe the relationships you have with other non-profit organizations that provide similar or complementary services. Please explain how you will leverage pre-existing relationships and partnerships to help achieve your goals for the populations you will serve and how you will avoid duplication of existing services. If you do not have relationships with other non-profit organizations, please explain the reason and how you plan to develop new relationships.

Scoring of this criterion will be based on the following.

1. Does the narrative describe an approach and process by which the applicant will successfully partner with the One-Stop delivery system to address the unmet need? (6 points)
2. Does the applicant present evidence of discussions with the One-Stop delivery system (*e.g.*, a signed letter from the Local Workforce Investment Board or other One-Stop delivery system principals)? (5 points)
3. Does the applicant's history of collaboration with other non-profit organizations in the community support the conclusion that these grant activities will be successful? (4 points)
4. Does the applicant show that it will take the appropriate steps to develop relationships with other local non-profit organizations delivering services to similar populations. (5 points)

C. Presentation of Strategic Plan, Goals, and Timeline (50 points)

- The applicant must describe the methodology for providing services, including any educational or training curriculum or other tools to be used. Describe the staff/volunteer positions that will be providing services under this grant.
- The applicant must present a timeline of major, measurable tasks and activities to be undertaken. The timeline must include how many people will receive services and/or participate and complete classes detailed in the training curriculum.
- The applicant must also describe the measurable outcomes that the program participants will achieve over the life of this grant. Measurable outcomes must include how many participants will enter employment over the grant period and how many of those individuals will stay employed through the end of the grant period (retention). Outcomes also include measures such as how many participants will increase numeracy or literacy or enter an educational or training program or the average increase of wages for program participants. The Department understands that these outcomes will be achieved by bringing together the resources of the workforce system as well as the grantee.

Scoring of this criterion will be based on the following.

1. Do the activities and tasks presented on the timeline appear to be achievable with the likelihood of project success given available resources? (20 points)
2. Does the applicant provide tangible outcome measures and goals that allow both the applicant and DOL to gauge the impact of the activities on meeting the community need? (15 points)
3. Do these goals include tracking employment outcomes and retention outcomes for those served? (15 points)

D. Description of Measurements of Success (15 points)

- Describe what mechanisms you will develop, in partnership with the One-Stop delivery system, to track your success in achieving promised goals and outcomes.
- Describe any other methods you will use for evaluating your project's success.

Scoring of this criterion will be based on the following.

1. Does the applicant reflect an understanding of what it would need to do in order to track progress and success? (15 points)

2. Review and Selection Process

A technical review panel will make a careful evaluation of applications against the rating criteria. The review panel recommendations are advisory. The ETA grant officer will fully consider the panel recommendations and take into account geographic balance to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Solicitation. The grant officer may consider any information that comes to his or her attention. The grant officer reserves the right to award without negotiation. The criteria in Part V, Section 1 will serve as the basis upon which submitted applications will be evaluated.

VI. Award Administration Information

1. Award Notices

Award notifications will be posted on the ETA homepage at *http://www.doleta.gov.*

2. Administrative and National Policy Requirements

Administrative Program Requirements. All grantees, including faith-based organizations will be subject to all applicable Federal laws (including provisions in appropriations law), regulations, and the applicable Office of Management and Budget (OMB) Circulars. The applicants selected under the SGA will be subject to the following administrative standards and provisions, if applicable.

a. Workforce Investment Boards—20 CFR Part 667.220 (Administrative Costs).

b. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)–48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

f. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

g. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Code section 501(c)(4) that engage in lobbying activities will not be eligible for the receipt of Federal funds and grants.

Note: Except as specifically provided in this Notice, USDOL–ETA's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the USDOL–ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

3. Reporting Requirements

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (Form SF–269) is required until such time as all funds have been expended or the period of availability has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. The grantee must use ETA's On-line Electronic Reporting System to submit the quarterly reports.

Narrative Progress Reports. The grantee must submit a quarterly financial and narrative progress report to the Federal Project Officer within 30 days following each quarter. Copies are to be submitted electronically providing a detailed account of activities undertaken during that quarter. Reports must include the following information for the grassroots grantees.

- The number of participants served per quarter (new and active), noting the specific services the grantee is providing in this project.
- The number of One-Stop Career Center clients referred to the grantee.
- Number of grantee participants referred to the One-Stop.
- The total number of volunteer hours committed to the grant program.
- Number of participants placed in post-secondary education or advanced training.
- Number of participants placed in a job.
- Average hourly wages at the time of job placement.
- Of the participants placed in a job since the beginning of the grant, how many were continuously employed for 6 months.
- Of the participants placed in a job since the beginning of the grant, how many were re-employed in the last 6 months.
- List other goals submitted with the grant application or additional goals developed for the program.
- List demographic information.

VII. Agency Contacts

Any questions regarding this SGA should be *faxed* to Marsha G. Daniels, Grants Management Specialist, Division of Federal Assistance, fax number (202) 693–2705. (This is not a toll-free number.) You must specifically address your fax to the attention of Marsha G. Daniels and should include SGA/DFA PY 04–03, a contact name, fax and phone number.

FOR FURTHER INFORMATION CONTACT: Marsha G. Daniels, Grants Management Specialist, Division of Federal Assistance, on (202) 693–3504. (This is not a toll-free number.) This announcement is also being made available on the USDOL–ETA Web site at *http://www.doleta.gov/sga/sga.cfm* and *www.grants.gov.* Award notifications will also be announced on this Web page.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Marsha G. Daniels, Reference SGA/DFA PY04–03, 200 Constitution Avenue, NW., Room N–4438, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

VIII. Other Information

DOL maintains a number of web-based resources that may be of assistance to applicants. The webpage for the Department's Center for Faith-Based & Community Initiatives (*http://www.dol.gov/cfbci*) is a valuable source of background on this initiative. America's Service Locator (*www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. ETA has a webpage (*www.doleta.gov/regions*), which contains contact information for the state and local Workforce Investment Boards. Applicants are encouraged to review ''Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal'' (*http://www.dol.gov/cfbci/sgabrochure.htm*).

For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support,

please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*www.fbci.gov*).

Signed at Washington, DC, this 22nd day of March, 2005.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

Appendix A: SF–424 Application for Federal Assistance

Appendix B: SF–424A Budget Form

Appendix C: OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

1. TYPE OF SUBMISSION: Application ☐ **Construction** ☐ **Non-Construction**	Pre-application ☐ **Construction** ☐ **Non-Construction**	**2. DATE SUBMITTED**	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:		**Organizational Unit:**	
		Department:	
Organizational DUNS:		Division:	
Address:		**Name and telephone number of person to be contacted on matters involving this application (give area code)**	
Street:		Prefix:	First Name:
City:		Middle Name	
County:		Last Name	
State:	Zip Code	Suffix:	
Country:		Email:	
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐		Phone Number (give area code)	Fax Number (give area code)

8. TYPE OF APPLICATION: ☐ **New** ☐ **Continuation** ☐ **Revision** If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*	

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date:	Ending Date:	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON	
b. Applicant	$ .00		
c. State	$ .00	DATE:	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372	
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**	
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation.	☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 EXP. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 05–5907 Filed 3–24–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the ''**Federal Register**'', or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

Illinois
IL20030018 (Jun. 13, 2003)
Michigan
MI20030001 (Jun. 13, 2003)
MI20030002 (Jun. 13, 2003)
MI20030003 (Jun. 13, 2003)
MI20030004 (Jun. 13, 2003)
MI20030005 (Jun. 13, 2003)
MI20030007 (Jun. 13, 2003)
MI20030008 (Jun. 13, 2003)
MI20030010 (Jun. 13, 2003)
MI20030011 (Jun. 13, 2003)
MI20030012 (Jun. 13, 2003)
MI20030013 (Jun. 13, 2003)
MI20030015 (Jun. 13, 2003)
MI20030016 (Jun. 13, 2003)
MI20030017 (Jun. 13, 2003)
MI20030019 (Jun. 13, 2003)
MI20030020 (Jun. 13, 2003)
MI20030021 (Jun. 13, 2003)
MI20030023 (Jun. 13, 2003)
MI20030026 (Jun. 13, 2003)
MI20030027 (Jun. 13, 2003)
MI20030030 (Jun. 13, 2003)
MI20030031 (Jun. 13, 2003)
MI20030034 (Jun. 13, 2003)
MI20030035 (Jun. 13, 2003)
MI20030040 (Jun. 13, 2003)

Volume V

Kansas
KS20030001 (Jun. 13, 2003)

Volume VI

Washington
WA20030001 (Jun. 13, 2003)
WA20030002 (Jun. 13, 2003)
WA20030005 (Jun. 13, 2003)
WA20030006 (Jun. 13, 2003)
WA20030008 (Jun. 13, 2003)
WA20030010 (Jun. 13, 2003)
WA20030023 (Jun. 13, 2003)

Volume VII

Nevada
NV20030001 (Jun. 13, 2003)
NV20030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davis-bacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specific the

State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 17th day of March 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–5609 Filed 3–24–05; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors Operations and Regulations Committee

Time and Date: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet April 1, 2005, at 9 a.m.

Location: Caddell Conference Room, Slaughter Hall, 3rd Floor, University of Virginia School of Law, 580 Massie Road, Charlottesville, Virginia.

Status of Meetings: Open.

Matters to be Considered:

Open Session

1. Approval of agenda.
2. Consider and act on Notice of Proposed Rulemaking on Financial Eligibility, 45 CFR part 1611.
   a. Staff report;
   b. OIG's report; and
   c. Public comment.
3. Other public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

Contact Person for Information: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: March 23, 2005.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 05–6076 Filed 3–23–05; 2:57 pm]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2005–4 CARP SRA–Digital]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of voluntary negotiation period.

SUMMARY: The Copyright Office of the Library of Congress is announcing the voluntary negotiation period for the purpose of determining the royalty fees for the retransmission of digital over–the–air television broadcast signals by satellite carriers under the statutory license.

DATES: The voluntary negotiation period commences on March 25, 2005 and concludes on April 25, 2005. Voluntary agreements must be submitted no later than April 25, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of voluntary agreements should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000. If delivered by a commercial courier, an original and five copies of voluntary agreements must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel/CARP, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of voluntary agreements should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Voluntary agreements may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Gina Giuffreda, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

The satellite carrier compulsory license establishes a statutory copyright licensing scheme for satellite carriers that retransmit over–the–air television broadcast signals to satellite dish owners. 17 U.S.C. 119. Congress created the license in 1988 with the passage of the Satellite Home Viewer Act of 1988. Congress reauthorized the satellite license for additional five–year periods in 1994 and 1999, and the license was slated to expire on December 31, 2004. However, Congress again reauthorized the satellite license for another five years with the passage of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA'') (as part of the Consolidated Appropriations Act, 2005), Pub. L. 108–447, which was signed into law by the President on December 8, 2004.

Rates for the statutory license were initially set by Congress in the Satellite Home Viewer Act of 1988 and then later adjusted by a three–person arbitration panel convened by the former Copyright Royalty Tribunal. 57 FR 19052 (May 1, 1992). When the license was reauthorized in 1994, Congress directed that the rates be adjusted by the Librarian of Congress using the system that replaced the Copyright Royalty Tribunal, namely, a Copyright Arbitration Royalty Panel (''CARP''). Accordingly, the Librarian adjusted the rates in 1997. 62 FR 55742 (October 28, 1997). In the Satellite Home Viewer Improvement Act of 1999, which reauthorized the license for an additional five years, Congress reduced the rates set by the Librarian. 17 U.S.C. 119(c)(4).

SHVERA adopts the rates as reduced by Congress in 1999 for the retransmission of analog signals but calls for the adjustment of those rates.[1] In addition, SHVERA calls for the setting of rates, for the first time, for the retransmission of the primary digital transmissions of network stations and superstations. SHVERA provides that the rates to be paid by satellite carriers for the retransmission of digital signals shall be the rates set by the Librarian in 1997 for the retransmission of analog signals, 37 CFR 258.3(b)(1)&(2), reduced

[1] The Library has begun the process to adjust the rates paid for the retransmission of analog signals. *See* 69 FR 78482 (December 30, 2004); 70 FR 3656 (January 26, 2005).

by 22.5 percent but provides for a rate adjustment in accordance with the procedures set forth in section 119(c)(1) of the Copyright Act.

On March 8, 2005, the Copyright Office received a letter from EchoStar Satellite L.L.C., DirecTV, Inc., Program Suppliers, and the Joint Sports Claimants requesting that the Office begin the process of setting the rates for the retransmission of digital broadcast signals by initiating a voluntary negotiation period so that rates for both digital and analog signals ''will be in place before the July 31, 2005 deadline for satellite carriers to pay royalties for the first accounting period of 2005.'' [2] Letter at 2. The Office sees no reason not to grant this request. Accordingly, today's notice begins the process mandated by statute.

Voluntary Negotiation Period

Section 119(c)(2) of the Copyright Act, 17 U.S.C., provides that ''[t]he process and requirements for establishing the royalty fee payable . . . for the secondary transmission of the primary digital transmissions of network stations and superstations shall be the same'' as that set forth in section 119(c)(1) for the amendment of the rates paid for the retransmission of analog signals. Section 119(c)(1) provides that ''the Librarian of Congress shall cause to be published in the **Federal Register** [notice] of the initiation of the voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers'' for the retransmission of digital broadcast signals. This notice initiates the voluntary negotiation period.

The statute does not specify how long the voluntary negotiation period is to last. However, the regulations governing CARP proceedings provide for a ''30–day period for negotiation of a settlement'' when adjusting rates under the cable, phonorecord and jukebox statutory licenses. 37 CFR 251.63(a). Since the rates will be determined under the current CARP system[3] should parties be unable to negotiate a voluntary agreement or an objection to such agreement is raised, the Library sees no reason not to adopt the period set forth in § 251.63(a) here. Therefore, the voluntary negotiation period commences today, March 25, 2005, and concludes April 25, 2005.

If a voluntary agreement is reached by the end of the negotiation period, the parties can request that the Librarian publish the agreement for notice and comment in accordance with section 119(c)(1)(D)(ii)(II) and adopt the rates in the voluntary agreement if no objections are received from a party with a significant interest and an intention to participate in a CARP proceeding. 17 U.S.C. 119(c)(1)(D)(ii)(III). Voluntary agreements must be submitted no later than April 25, 2005. If no agreements are received by that time, the Library will proceed in accordance with the rules and regulations of 37 CFR part 251.

Dated: March 22, 2005

David O. Carson,

General Counsel.

[FR Doc. 05–5953 Filed 3–24–05; 8:45 am]

BILLING CODE 1410–33–S

[2] We note that the letter referenced Docket No. 2004–9 CARP SRA, which is the proceeding to adjust the rates for the retransmission of analog signals. As the parties state in their letter, ''the analog rates and digital rates are distinct and separate.'' Letter at 1. We agree. Therefore, we have assigned a separate docket number to this proceeding.

[3] On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Act of 2004, Pub. L. 108–419, which phases out the CARP system and replaces it with three permanent Copyright Royalty Judges. However, SHVERA calls for satellite royalty rates to be determined ''under chapter 8 as in effect on the day before the date of enactment of the Copyright Royalty and Distribution Act of 2004.'' 17 U.S.C. 119(c)(1)(F).

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Notice of Issuance of Partial Conditional Exemption; Portland General Electric Company, Trojan Independent Spent Fuel Storage Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of partial conditional exemption.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–8500; fax number: (301) 415–8555; e-mail: *cmr1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Portland General Electric Company (PGE) is the licensee and holder of License No. SNM–2509 for the Trojan Independent Spent Fuel Storage Facility (Trojan ISFSI). In addition, PGE holds License No. NPF–1, pursuant to 10 CFR part 50, for the Trojan Nuclear Plant. The licensee will complete decommissioning of the Trojan Nuclear Plant and intends to terminate its Part 50 license for the Trojan Nuclear Plant. The Trojan ISFSI contains the spent fuel removed from the Trojan Nuclear Plant.

Currently, the licensee provides financial assurance for the Trojan ISFSI pursuant to 10 CFR 72.30(c)(5), which allows a part 50 license holder to use the financial assurance provisions of part 50 to provide financial assurance for an ISFSI. The licensee maintains an external sinking fund for decommissioning funds pursuant to 10 CFR 50.75(e). However, when its part 50 license is terminated, it will no longer meet the condition of 10 CFR 72.30(c)(5) that allows it to use its existing external sinking fund to provide financial assurance for its ISFSI.

On April 29, 2004, PGE filed a request for NRC approval of a partial exemption from the provision of 10 CFR 72.30(c)(5) that requires an ISFSI licensee to additionally hold a part 50 license in order to use an external sinking fund as the exclusive means of financial assurance for decommissioning costs of an ISFSI.

II. Requested Action

Pursuant to the requirements of 10 CFR 72.7, PGE requested a partial exemption from the financial assurance requirements of 10 CFR 72.30(c)(5). The exemption request was ''partial'' because it would apply only to the requirement that the ISFSI licensee also hold a Part 50 license to use an external sinking fund as its exclusive method of providing financial assurance for its ISFSI. The licensee will continue to provide financial assurance conforming to the requirements of 10 CFR 50.75(e) and (h), although it reserved the right to change to another method as provided in other sections of 10 CFR 72.30(c). The licensee pointed out that the wording of 10 CFR 72.30(c)(5) allowed an ''electric utility'' to use an external sinking fund as the exclusive method of providing financial assurance when its part 72 ISFSI license was first issued. However, the rule was amended effective on December 24, 2003, which resulted in the change of the condition from ''electric utility'' to ''a part 50 licensee.'' PGE stated that it will remain an electric utility after the termination of its part 50 license, hence it will continue to meet the intent of the rule as originally issued.

III. Discussion

The Commission may grant a specific exemption to the financial assurance requirements of 10 CFR 72.30(c)(5) provided that the requirements of 10 CFR 72.7 are satisfied. The Commission determined that a partial exemption from 10 CFR 72.30(c)(5) meets the

requirements of 10 CFR 72.7, as discussed below:

Specific Exemption Is Authorized by Law

Prior to December 24, 2003, any ISFSI licensee that met the definition of ''electric utility'' in 10 CFR 50.2 was eligible to use the financial assurance methods of 10 CFR 50.75(e) to provide financial assurance for its ISFSI. As a result, the NRC approved use of an external sinking fund conforming to the requirement of 10 CFR 50.75(e)(1)(ii)(A) as financial assurance for the Trojan ISFSI pursuant to 10 CFR 72.30(c)(5).

The amendment to 10 CFR 72.30(c)(5) that became effective December 24, 2003, was incidental to the primary changes in Part 50 issued at the same time with regard to reactor decommissioning trust funds. The amendment to 10 CFR 72.30(c)(5) was in response to a comment that suggested the change to maintain consistency between parts 72 and 50, but did not change the basis of the regulations.

The basis of 10 CFR 50.75(e)(1)(ii)(A) is that a licensee that recovers decommissioning costs through rates established through ''cost of service'' or similar rate-making authority may use an external sinking fund as its exclusive means of financial assurance. A licensee that is a public utility is presumed to meet that basis. Because PGE will remain a public utility after termination of its part 50 license, it will continue to meet the basis for allowing a part 72 licensee to provide financial assurance using the methods of part 50. Therefore, the partial exemption from part 72 is authorized by law.

Specific Exemption Will Not Present an Undue Risk to the Public Health and Safety

The specific exemption requested is administrative in nature. The exemption does not have any reasonable potential to (1) foreclose release of the Trojan ISFSI site for unrestricted use; (2) result in significant environmental impacts not previously reviewed; or (3) result in there no longer being reasonable assurance that adequate funds will be available for decommissioning. The exemption will allow use of a financial assurance method currently in use that has been approved by the NRC. Therefore, the partial exemption will not present an undue risk to the public health.

Specific Exemption Will Not Endanger the Common Defense and Security

The partial exemption is administrative in nature and does not involve information of activities that could potentially impact the common defense and security of the United States. Therefore, partial exemption will not endanger the common defense and security.

Specific Exemption Is Otherwise in the Public Interest

PGE's 2003 Annual Financial Statement (Form 10–K, submitted to the U.S. Securities and Exchange Commission (SEC) on March 19, 2004) stated that PGE will collect $14 million annually, until 2011, from its customers to pay for decommissioning. This includes funding for radiological and non-radiological decontamination as well as on-site spent nuclear fuel storage. Those collections will occur whether or not the exemption is granted. However, if the exemption is not granted, PGE will incur higher costs due to the expense of providing a second independent financial assurance instrument, which would lead to unnecessary additional costs. Therefore, the exemption is in the public interest.

Financial Ability of PGE To Fund the ISFSI Decommissioning Cost

The Trojan ISFSI decommissioning cost estimate was $7.9 million in 1997. Adjusting for inflation to 2004 would increase the cost to about $10 million. In order to assess the ability of PGE to finance that cost, the staff reviewed PGE's 2003 Form 10–K. The financial statements show that PGE possesses $3.37 billion in assets and earns $1.7 billion annually in revenues. The financial report stated that PGE maintained a strong financial position with stable cash flow, and will receive $14 million per year through 2011 for decommissioning costs. The cost of decommissioning the Trojan ISFSI appears well within the licensee's financial ability.

At the time of filing its exemption request, PGE was a wholly owned subsidiary of Enron Corporation. The staff determined that Enron's bankruptcy will not adversely affect PGE's ability to fund decommissioning of its Trojan ISFSI. Although Enron filed for bankruptcy protection, PGE did not. Regulatory ''ring-fencing'' effectively insulated PGE and its customers from the effects of Enron's bankruptcy. (Ring fencing is a state public utility board's regulatory strategy that prevents a utility's assets from being pledged as security for a parent company's obligations.) PGE's Quarterly Report, Form 10–Q, submitted to the SEC on November 5, 2004, states on page 41:

> PGE, as a separate corporation, owns or leases the assets used in its business and PGE's management, separate from Enron, is responsible for PGE's day-to-day operations. PGE maintains its own cash management system and finances itself separately from Enron, on both a short- and long-term basis. Neither PGE nor Enron have guaranteed the obligations of the other and there are no loans between them. Under Oregon law and specific conditions imposed on Enron and PGE by the Oregon Public Utilities Commission (OPUC) in connection with Enron's acquisition of PGE in the merger of Enron and Portland General Corporation in 1997, Enron's access to PGE cash or utility assets (through dividends or otherwise) is limited.

Therefore, PGE's assets will be available to provide funding for decommissioning if it continues as an Enron subsidiary. However, Enron entered into an agreement with Oregon Electric Utility Company, LLC, to sell all issued and outstanding PGE stock to Oregon Electric. In the event the sale is consummated, the Enron bankruptcy will be of no further concern.

IV. Conclusion

The Commission determined that the specific exemption to the financial assurance requirements of 10 CFR 72.30(c)(5) is authorized by law and will not endanger life or property, or the common defense and security and is otherwise in the public interest.

In connection with the issuance of the exemption, an Environmental Assessment and Finding of No Significant Impact was noticed in the **Federal Register** on March 17, 2005 (70 FR 13052).

Therefore, the Commission grants a partial exemption from the requirement of 10 CFR 72.30(c)(5) that the licensee must hold a part 50 license in order to provide financial assurance using the methods of 10 CFR 50.75(e) and (h); however, the exemption is granted subject to the following two conditions:

1. The exemption shall not become effective until the licensee submits, within 30 days of the issuance of this grant of exemption, documentation adequate to demonstrate that funding for the Trojan ISFSI decommissioning has been approved for recovery in rates by a rate making authority; and

2. The exemption shall cease to be effective in the event that funds remaining to be placed into the Trojan ISFSI decommissioning external sinking fund are no longer approved for recovery in rates by a competent rate regulating authority.

This exemption is effective upon satisfaction of Condition 1 above, and shall cease being effective in the event Condition 2 above is triggered.

FURTHER INFORMATION: Supporting documentation, with respect to this exemption request, is available for

inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/ADAMS.html.* A copy of the PGE request for NRC approval of a partial exemption from the provision of 10 CFR 72.30(c)(5), dated April 29, 2004, can be found at this site using the Agencywide Documents Access and Management System (ADAMS) accession No. ML041260470. Any questions should be referred to Christopher M. Regan, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mailstop O 13D13, telephone (301) 415–8500, fax (301) 415–8555.

Dated at Rockville, Maryland this 17th day of March, 2005.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–5901 Filed 3–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Interim Staff Guidance Documents For Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is preparing and issuing Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analyses, license applications or amendment requests or other related licensing activities for fuel cycle facilities under subpart H of 10 CFR part 70. The NRC is soliciting public comments on two ISG Draft documents (ISG–01 and –04) which will be considered in the final versions or subsequent revisions. ISG–03 has been issued and is provided for information.

II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on the Interim Staff Guidance documents for fuel cycle facilities. Draft Interim Staff Guidance–01, Version 02, provides guidance to NRC staff relative to methods for qualitative evaluation of likelihood in the context of a review of a license application or amendment request under 10 CFR part 70, subpart H. ISG–01, Version 02, has been generally revised based on NRC staff and public comments on the initial version. Interim Staff Guidance–03, Revision 0 has been approved and issued and provides guidance to NRC staff relative to relationships between 10 CFR part 70, subpart H, nuclear criticality safety performance requirements and the double contingency principle. Draft Interim Staff Guidance–04, Version 0 provides guidance to NRC staff relative to baseline design criteria for new facilities and new processes at existing facilities.

III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Interim staff guidance	ADAMS accession number
Interim Staff Guidance–01, Version 02.	ML050690286.
Interim Staff Guidance–03, Revision 0.	ML050690302.
Interim Staff Guidance–04, Version 0.	ML050690296.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on ISG–01 and ISG–04 should be directed to the NRC contact listed below by April 25, 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. Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Comments can also be submitted by telephone, fax, or e-mail which are as follows: Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov.*

Dated in Rockville, Maryland this 18th day of March, 2005.

For the Nuclear Regulatory Commission.

David H. Tiktinsky,

Acting Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–5902 Filed 3–24–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 28, 2005:

An open meeting will be held on Tuesday, March 29, 2005, at 10 a.m. in Room 1C30 and closed meetings will be held on Tuesday, March 29, 2005, at 11 a.m. and Thursday, March 31, 2005, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, March 29, 2005, will be:

The Commission will hear oral argument on appeals by Robert W. Armstrong, III and

the Division of Enforcement of an initial decision of an administrative law judge. Armstrong was formerly controller of National Medical Care, Inc. (''NMC''), a subsidiary of W.R. Grace & Co. (''Grace''). The law judge found that Armstrong participated in a scheme to manipulate Grace's reported earnings to achieve predetermined targets. The alleged scheme involved improperly recording excess earnings as reserves and later using the excess reserves to bolster earnings, thereby achieving the impression that Grace had steady, consistent growth in income over a period of several years.

The law judge found that Armstrong willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b–5 and that he was a cause of Grace's violation of those provisions. The law judge also concluded that, as a result of the scheme to manipulate Grace's earnings, Grace's periodic reports during the relevant period included financial statements that were not in accordance with Generally Accepted Accounting Principles (''GAAP'') and that were materially misleading in violation of the periodic reporting requirements contained in Exchange Act Section 13(a) and Exchange Act Rules 12b–20, 13a–1, and 13a–13. The law judge found that Armstrong was a cause of these violations. The law judge further found that Armstrong violated the recordkeeping requirements of Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2–1, and was a cause of Grace's violation of these provisions and of Exchange Act Section 13(b)(2). The law judge imposed a cease-and-desist order against Armstrong.

The law judge dismissed the charges brought pursuant to Commission Rule of Practice 102(e). The law judge held that Armstrong had not been appearing or practicing before the Commission, and dismissed the Rule 102(e)(1)(iii) charges on this basis.

Armstrong appeals the law judge's conclusion that he violated and caused Grace's violations of the federal securities laws and the Commission's rules. He also maintains that there is no basis in the public interest for the imposition of a cease-and-desist order. The Division appeals the law judge's dismissal of the Rule 102(e) charges. The Division seeks to deny permanently to Armstrong the privilege of appearing or practicing before the Commission.

Among the issues likely to be considered are:

(1) Whether respondent committed the alleged violations; and

(2) If so, whether sanctions should be imposed in the public interest.

The subject matter of the closed meeting scheduled for Tuesday, March 29, 2005, will be:

Post-argument discussion.

The subject matter of the closed meeting scheduled for Thursday, March 31, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 22, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–5986 Filed 3–22–05; 4:21 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51397; File No. SR–ISE–2005–13]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

March 18, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2005, the International Securities Exchange, Inc. (the ''Exchange'' or the ''ISE'') 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 ISE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on the Nasdaq-100® Stock Index. The text of the proposed rule change is available on the ISE's Web site [*http://www.iseoptions.com/legal/proposed_rule_changes.asp*], at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 ISE 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 is proposing to amend its Schedule of Fees to establish fees for transactions in options on the Nasdaq-100 Stock Index, both full value (''NDX'') and 1/10 value (''MNX'').[6] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on NDX and MNX.[7] The amount of the execution fee and comparison fee shall be the same for all order types on the Exchange—that is, orders for Public Customers, Market Makers, and Firm Proprietary—and shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker and Firm Proprietary transactions in equity options.[8] The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

The Exchange has entered into a license agreement with The Nasdaq Stock Market, Inc. in connection with the listing and trading of index options on the Nasdaq-100 Stock Index. As with licensed equity options, the Exchange is adopting a per contract fee for trading in these options to defray the licensing

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 30-day operative delay. *See* 17 CFR 240.19b–4(f)(6)(iii) (Rule 19b–4(f)(6)(iii)).

[6] *See* Securities Exchange Act Release No. 51121 (Feb. 1, 2005), 70 FR 6476 (Feb. 7, 2005) (File No. SR–ISE–2005–01) (order approving the trading of options on full and reduced values of the Nasdaq-100 Stock Index).

[7] The Exchange represents that these fees will be charged only to Exchange members.

[8] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

costs.[9] The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders [10] from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders [11] under a pilot program that is set to expire on July 31, 2005.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[12] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [15] 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 requested that the Commission waive the 30-day operative delay and accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b–4(f)(6)(iii). Since the proposed rule change does not raise any novel issues and the Exchange customarily charges fees for options traded on the Exchange, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] In designating the proposal immediately operative, the Commission does not believe that the proposed rule change raises any new issues of regulatory concern. Accordingly, the Commission has waived the 30-day operative delay requirement for this proposed rule change, and has determined to designate the proposed rule change operative as of March 7, 2005, the date of filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.[17]

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*. Please include File No. SR–ISE–2005–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–13. 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 such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2005–13 and should be submitted by April 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1305 Filed 3–24–05; 8:45 am]

BILLING CODE 8010–01–P

[9] The Commission notes, however, that the proposed surcharge fee of $0.15 per contract for NDX and MDX is higher than the current surcharge fee level of $0.10 per contract on other products listed in the ISE's Schedule of Fees.

[10] Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[11] *See* ISE Rule 1900(10) (defining Linkage Orders). The surcharge fee will apply to the following Linkage Orders: Principal Acting as Agent (''P/A'') Orders and Principal Orders.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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. *See* 15 U.S.C. 78c(f).

[17] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51389; File No. SR–PCX–2005–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Amendments to the Bylaws of PCX Holdings, Inc.

March 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2005, the Pacific Exchange, Inc. (''PCX'' 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 under subparagraph (f)(6) of Rule 19b–4 under the Act,[3] 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

PCX is submitting on behalf of PCX Holdings, Inc. (''PCXH'') a proposed rule change to reflect an amendment to the Bylaws of PCXH to adopt new Section 7.07. This Bylaw provision states that PCXH would take such action as is necessary to insure that its officers, directors, and employees consent to the applicability of Sections 7.03 and 7.04 of the PCXH Bylaws with respect to Exchange-related activities. The text of the proposed rule change is below. Proposed new language is in *italics.*

* * * * *

PCX HOLDINGS, INC.

BYLAWS

ARTICLE 7

MISCELLANEOUS

Section 7.01–7.06—No Change.

Section 7.07—The Corporation shall take such action as is necessary to ensure that the Corporation's officers, directors and employees consent to the applicability of Section 7.03 and 7.04 with respect to Exchange-related activities.

* * * * *

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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 17, 2004, the Commission approved the PCX's plan of demutualization.[4] As a condition for Commission approval of the plan of demutualization, Exchange staff represented to the Commission [5] that it would present to the Board of Directors of PCXH for its approval a proposed new PCXH Bylaw provision stating that PCXH would take such action as is necessary to insure that its officers, directors, and employees consent to the applicability of sections 7.03 and 7.04 of the PCXH Bylaws with respect to Exchange-related activities. The purpose of proposed Section 7.07 to the PCXH Bylaws is to allow the Exchange to satisfy the representation it made to the Commission as part of the demutualization order.

The Directors of PCXH approved this amendment to the PCXH Bylaws on June 24, 2004. Pursuant to Section 7.06 of the PCXH Bylaws, the proposed amendment was submitted to the PCX Board of Directors. The PCX Board of Directors determined at its September 11, 2004 meeting that this amendment should be submitted to the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and subparagraph (f)(6) of Rule 19b–4 thereunder,[9] because the Exchange has designated the proposed rule change as one that: (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. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. At any time within 60 days of the filing of such 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 purpose 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:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (approving File No. SR–PCX–2004–08).

[5] *See* Footnote 27 of Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (approving File No. SR–PCX–2004–08).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the 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–PCX–2005–17 and should be submitted on or before April 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1303 Filed 3–24–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURTITES AND EXCHANGE COMMISSION

[Release No. 34–51401; File No. SR–PCX–2005–26]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Remote Market Makers' Ability To Be Reappointed Options Issues

March 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2005, the Pacific Exchange, Inc. (''PCX'' 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 PCX. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder[4] as being concerned solely with the administration of the Exchange, which renders the proposal effective upon the filing with 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

PCX is proposing to amend PCX Rules 6.35(g)(4) to eliminate the requirement that a Remote Market Maker (''RMM'') wait one full calendar quarter prior to being reappointed in an option issue that such RMM previously relinquished. Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

Rule 6.35 Appointment of Market Makers

(a)–(f) No Change.

(g) Remote Market Makers.

(1)–(3) No Change.

(4) Remote Market Makers may withdraw from trading an option issue that is within their primary appointment by providing the Exchange with a three-business-day written notice of such withdrawal. Remote Market Makers who fail to give advance written notice of withdrawal to the Exchange may be subject to formal disciplinary action pursuant to Rule 10. [Subsequent to withdrawal, the Remote Market Maker may not be re-appointed as a Remote Market Maker in that option issue for a period of one full calendar quarter.]

(5)–(6) No Change.

(h)–(i) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 6.35(g)(4) currently specifies that an RMM must wait one full calendar quarter prior to being reappointed in an option issue that was previously relinquished by such RMM. According to the Exchange, when PCX Rule 6.35(g)(4) was originally approved, the one calendar quarter prohibition was necessary to facilitate an effective rollout of PCX's new electronic trading platform, PCX Plus. In addition, the restriction was designed to mitigate the anticipated administrative burden related to frequent requests for the addition and removal of issues included in an RMM's primary appointment.

Since the introduction of PCX Plus, the original reasons for the one calendar quarter restriction no longer exist. PCX Plus has been fully implemented and is operating effectively. The need to prohibit RMMs from adding and removing issues on a regular basis to maintain system integrity is no longer necessary. Further, based on actual results, the Exchange has learned that RMMs do not switch issues on a frequent basis, as originally anticipated. As such, the Exchange overestimated the administrative burden related to adding and/or removing issues from an RMM's primary appointment. Based on actual results, the Exchange staff is capable of handling the administrative workload that would result from the removal of the current restriction.

Finally, the elimination of the one calendar quarter prohibition would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

allow RMMs to add and/or remove issues more freely and thus allow liquidity to move into those options issues where a greater trading demand exists. PCX believes that additional liquidity resulting from the removal of this restriction would allow it to provide better markets and thus benefit the public.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(3) of Rule 19b–4 thereunder,[8] because it is concerned solely with the administration of the Exchange. 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2005–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–PCX–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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. 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–PCX–2005–26 and should be submitted on or before April 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1304 Filed 3–24–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(3).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10020 and #10021]

California Disaster Number CA–00001

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–1577–DR), dated February 4, 2005.

Incident: Severe Storms, Flooding, Debris Flows, and Mudslides.

Incident Period: December 27, 2004, through January 11, 2005.

DATES: *Effective Date:* March 16, 2005.

Physical Loan Application Deadline Date: May 16, 2005.

EIDL Loan Application Deadline Date: November 4, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of California dated February 4, 2005, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:
- Kern
- San Diego
- Orange
- Santa Barbara
- Riverside
- San Bernardino

Contiguous Counties:

California
- Imperial
- San Luis Obispo
- Inyo
- Tulare
- Kings

Arizona
- La Paz
- Mohave

Nevada
- Clark

The notice of the Presidential disaster declaration for the State of California dated February 4, 2005, is also amended to extend the deadline for filing applications for physical damages as a result of this disaster to May 16, 2005.

The States which received the EIDL Declaration # include California, Arizona, and Nevada.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–5941 Filed 3–24–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration or interested others. The conference call will take place on Tuesday, April 29, 2005, at 1 p.m. eastern standard time.

Anyone wishing to make an oral presentation to the Board must contact Dionna Martin, Senior Program Manager, U.S. Small Business Administration, Office of Small Business Development Center, 409 3rd Street, SW., Washington, DC 20416, telephone: (202) 205–7042; fax (202) 481–1671.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–5944 Filed 3–24–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10 a.m. eastern time on Wednesday, April 13, 2005, at the HSBC Bank USA, One HSBC Center, Buffalo, New York to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, in writing by letter or fax no later than April 8, 2005, in order to be put on the agenda. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 1311 Federal Building, 111 West Huron Street, Buffalo, NY 14202. Telephone (716) 551–4301 or Fax (716) 551–4418.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–5943 Filed 3–24–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Small Business Administration; Region III Regulatory Fairness Board

March 18, 2005.

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, April 7, 2005, at 1 p.m. at the National College of Business & Technology, Roanoke Valley Campus, 1813 East Main Street, Conference Center, Room 135, Salem, VA 24153, phone (540) 986–1800, Ext. 402, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Peggy FaJohn in writing or by fax, in order to be put on the agenda. Peggy FaJohn, Public Information Officer, SBA Richmond District Office, 400 N. 8th Street, Suite 1150, Richmond, VA 23240, phone (804) 771–2400, Ext. 126, fax (202) 481–4891, e-mail: *margaret.fajohn@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Matthew K. Becker,

Committee Management Officer, Office of the Administrator.

[FR Doc. 05–5942 Filed 3–24–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent, Project Cancellation, California Forest Highway 224, Bautista Canyon Road, Riverside County, CA

AGENCY: Department of Transportation, Federal Highway Administration (FHWA).

ACTION: Notice of intent, project cancellation.

SUMMARY: On August 20, 2004, the Federal Highway Administration (FHWA), Central Federal Lands Highway Division, and the County of Riverside published a notice of availability of a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed reconstruction of an 8.2-mile segment of California Forest Highway 224, Bautista Canyon Road. Preliminary engineering and environmental work on the project has been funded through the County of Riverside and the Federal Lands Forest Highway Program, which is jointly administered by the FHWA, the USDA Forest Service and the California Department of Transportation. Following public hearings on the Draft EIS/EIR, comments were received from the general public, the USDA Forest Service, the Environmental Protection Agency, and the Department of the Interior. On the basis of these comments, and upon further analysis of the project purpose and need, alternatives, and the cost to mitigate impacts to biological and cultural resources, the Forest Highway programming agencies and the County of Riverside have determined that the project is not viable. The project is being removed from the Federal Lands Highway Program of projects. All engineering and environmental studies have been sopped.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Hallisy, Environmental Protection Specialist, Federal Highway Administration, 12300 West Dakota Avenue, Lakewood, Colorado 80228, telephone 720 963–3685.

Dated: March 18, 2005.

Bernardo Bustamante,

Project Manager.

[FR Doc. 05–5952 Filed 3–24–05; 8:45 am]

BILLING CODE 4910–56–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554 (Sub–No. 3)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company [1]

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial revocation of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, revokes the class exemption as it

[1] Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company has changed its name to BNSF Railway Company (BNSF).

pertains to the modified trackage rights described in STB Finance Docket No. 34554 (Sub-No. 2)[2] to permit the trackage rights to expire on or about December 31, 2005, in accordance with the agreement of the parties,[3] subject to the employee protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

DATES: This exemption is effective on April 24, 2005. Petitions to stay must be filed by April 4, 2005. Petitions to reopen must be filed by April 14, 2005.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34554 (Sub-No. 3) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1609. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; telephone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 17, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–5811 Filed 3–24–05; 8:45 am]

BILLING CODE 4915–01–P

[2] On January 25, 2005, Union Pacific Railroad Company (UP) concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to extend the expiration date of the local trackage rights granted to UP over BNSF's line of railroad between BNSF milepost 579.3 near Mill Creek, OK, and BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles. UP submits that the trackage rights are only temporary rights, but, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's new class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company*, STB Finance Docket No. 34554 (Sub-No. 2) (STB served Feb. 11, 2005).

[3] The original trackage rights granted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34554 (STB served Oct. 7, 2004), also extended between BNSF milepost 579.3 near Mill Creek, OK, and BNSF milepost 631.1 near Joe Junction, TX. By decision served November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1), the Board granted an exemption to permit the trackage rights granted in STB Finance Docket No. 34554 to expire. At that time, it was anticipated by the parties that the rights would expire on or about December 31, 2004. However, this authority had not been exercised at the time of filing of the notice of exemption in STB Finance Docket No. 34554 (Sub-No. 2) for an extension of the expiration date.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 17, 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 April 25, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1395.

Form Number: Form 8838.

Type of Review: Extension.

Title: Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement.

Description: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Respondents: Individuals or Households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—4 hrs 18 min.

Learning about the law or the form—1 hr 53 min.

Preparing the form—2 hrs and 2 min.

Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: On Occasion.

Estimated Total Reporting Burden: 8,230 Hours.

OMB Number: 1545–1420.

Form Number: Form 8849.

Type of Review: Extension.

Title: Claim for Refund of Excise Taxes.

Description: IRC sections 6402, 6404, and sections 301.6402–2, 301–6404–3 of the regulations, allow for refunds of taxes (except Income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, local or tribal government.

Estimated Number of Respondents: 125,292.

Estimated Burden Hours Respondent: 14 Hours and 56 Minutes.

Frequency of response: Quarterly, Annually.

Estimated Total Reporting Burden: 1,871,713 Hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Christopher Davis,

Treasury PRA Assistant.

[FR Doc. 05–5927 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 15, 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, Pub. L. 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 April 25, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0146.

Form Number: IRS Form 2553.

Type of Review: Revision.

Title: Election by a Small Business Corporation.

Description: Form 2553 is filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 500,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—9 hr., 19 min.

Learning about the law or the form—3 hr., 9 min.

Preparing, copying, assembling, and sending the form to the IRS—4 hr., 38 min.

Frequency of response: Other (once).

Estimated Total Reporting/Recordkeeping Burden: 8,555,000 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–5928 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 05–05]

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2005–12]

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congressional Committees

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate regarding differences in accounting and capital standards among the federal banking agencies.

SUMMARY: The OCC, Board, FDIC, and OTS (the Agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)). Section 37(c) requires the Agencies to jointly submit an annual report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate describing differences between the capital and accounting standards used by the Agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: *OCC:* Nancy Hunt, Risk Expert (202–874–4923), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: John F. Connolly, Senior Supervisory Financial Analyst (202–452–3621), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert F. Storch, Chief Accountant (202–898–8906), Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy (202–906–5654), Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (the federal banking agencies or the agencies) must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences between the accounting and capital standards used by the agencies. The report must be published in the **Federal Register**.

This report, which covers differences existing as of December 31, 2004, is the third joint annual report on differences in accounting and capital standards to be submitted pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)), as amended. Prior to the agencies' first joint annual report, Section 37(c) required a separate report from each agency.

Since the agencies filed their first reports on accounting and capital differences in 1990, the agencies have acted in concert to harmonize their accounting and capital standards and eliminate as many differences as possible. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) also directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be ''consistent with the principles of safety and soundness, statutory law and policy, and the public interest.'' During the past decade, the agencies have revised their capital standards to address changes in credit and certain other risk exposures within the banking system and to align the amount of capital institutions are

required to hold more closely with the credit risks and certain other risks to which they are exposed. These revisions have been made in a uniform manner whenever possible and practicable to minimize interagency differences.

While the differences in capital standards have diminished over time, a few differences remain. Some of the remaining capital differences are statutorily mandated. Others were significant historically but now no longer affect in a measurable way, either individually or in the aggregate, institutions supervised by the federal banking agencies. In addition to the specific differences noted below, the agencies may have differences in how they apply certain aspects of their rules. These differences usually arise as a result of case-specific inquiries that have only been presented to one agency. Agency staffs seek to minimize these occurrences by coordinating responses to the fullest extent reasonably practicable.

The federal banking agencies have substantially similar capital adequacy standards. These standards employ a common regulatory framework that establishes minimum leverage and risk-based capital ratios for all banking organizations (banks, bank holding companies, and savings associations). The agencies view the leverage and risk-based capital requirements as minimum standards and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The OCC, the FRB, and the FDIC, under the auspices of the Federal Financial Institutions Examination Council, have developed uniform Reports of Condition and Income (Call Reports) for all insured commercial banks and state-chartered savings banks. The OTS requires each OTS-supervised savings association to file the Thrift Financial Report (TFR). The reporting standards for recognition and measurement in the Call Reports and the TFR are consistent with generally accepted accounting principles (GAAP). Thus, there are no significant differences in regulatory accounting standards for regulatory reports filed with the federal banking agencies. Only one minor difference remains between the accounting standards of the OTS and those of the other federal banking agencies, and that difference relates to push-down accounting, as more fully explained below.

Differences in Capital Standards Among the Federal Banking Agencies

Financial Subsidiaries

The Gramm-Leach-Bliley Act (GLBA) establishes the framework for financial subsidiaries of banks.[1] GLBA amends the National Bank Act to permit national banks to conduct certain expanded financial activities through financial subsidiaries. Section 121(a) of the GLBA (12 U.S.C. 24a) imposes a number of conditions and requirements upon national banks that have financial subsidiaries, including specifying the treatment that applies for regulatory capital purposes. The statute requires that a national bank deduct from assets and tangible equity the aggregate amount of its equity investments in financial subsidiaries. The statute further requires that the financial subsidiary's assets and liabilities not be consolidated with those of the parent national bank for applicable capital purposes.

State member banks may have financial subsidiaries subject to all of the same restrictions that apply to national banks.[2] State nonmember banks may also have financial subsidiaries, but they are subject only to a subset of the statutory requirements that apply to national banks and state member banks.[3] Finally, national banks, state member banks, and state nonmember banks may not establish or acquire a financial subsidiary or commence a new activity in a financial subsidiary if the bank, or any of its insured depository institution affiliates, has received a less than satisfactory rating as of its most recent examination under the Community Reinvestment Act.[4]

The OCC, the FDIC, and the FRB adopted final rules implementing their respective provisions of Section 121 of GLBA for national banks in March 2000, for state nonmember banks in January 2001, and for state member banks in August 2001. GLBA did not provide new authority to OTS-supervised savings associations to own, hold, or operate financial subsidiaries, as defined.

Subordinate Organizations Other Than Financial Subsidiaries

Banks supervised by the OCC, the FRB, and the FDIC generally consolidate all significant majority-owned subsidiaries other than financial subsidiaries for regulatory capital purposes. This practice assures that capital requirements are related to the aggregate credit (and, where applicable, market) risks to which the banking organization is exposed. For subsidiaries other than financial subsidiaries that are not consolidated on a line-for-line basis for financial reporting purposes, joint ventures, and associated companies, the parent banking organization's investment in each such subordinate organization is, for risk-based capital purposes, deducted from capital or assigned to the 100 percent risk-weight category, depending upon the circumstances. The FRB's and the FDIC's rules also permit the banking organization to consolidate the investment on a pro rata basis in appropriate circumstances. These options for handling unconsolidated subsidiaries, joint ventures, and associated companies for purposes of determining the capital adequacy of the parent banking organization provide the agencies with the flexibility necessary to ensure that institutions maintain capital levels that are commensurate with the actual risks involved.

Under the OTS's capital regulations, a statutorily mandated distinction is drawn between subsidiaries, which generally are majority-owned, that are engaged in activities that are permissible for national banks and those that are engaged in activities ''impermissible'' for national banks. Where subsidiaries engage in activities

[1] A national bank that has a financial subsidiary must satisfy a number of statutory requirements in addition to the capital deduction and deconsolidation requirements described in the text. The bank (and each of its depository institution affiliates) must be well capitalized and well managed. Asset size restrictions apply to the aggregate amount of assets of all of the bank's financial subsidiaries. Certain debt rating requirements apply, depending on the size of the national bank. The national bank is required to maintain policies and procedures to protect the bank from financial and operational risks presented by the financial subsidiary. It is also required to have policies and procedures to preserve the corporate separateness of the financial subsidiary and the bank's limited liability. Finally, transactions between the bank and its financial subsidiary generally must comply with the Federal Reserve Act's (FRA) restrictions on affiliate transactions and the financial subsidiary is considered an affiliate of the bank for purposes of the anti-tying provisions of the Bank Holding Company Act. *See* 12 U.S.C. 5136A.

[2] *See* 12 U.S.C. 335 (state member banks subject to the ''same conditions and limitations'' that apply to national banks that hold financial subsidiaries).

[3] The applicable statutory requirements for state nonmember banks are as follows. The bank (and each of its insured depository institution affiliates) must be well capitalized. The bank must comply with the capital deduction and deconsolidation requirements. It must also satisfy the requirements for policies and procedures to protect the bank from financial and operational risks and to preserve corporate separateness and limited liability for the bank. Further, transactions between the bank and a subsidiary that would be classified as a financial subsidiary generally are subject to the affiliate transactions restrictions of the FRA. *See* 12 U.S.C. 1831w.

[4] *See* 12 U.S.C. 1841(*l*)(2).

that are impermissible for national banks, the OTS requires the deduction of the parent's investment in these subsidiaries from the parent's assets and capital. If a subsidiary's activities are permissible for a national bank, that subsidiary's assets are generally consolidated with those of the parent on a line-for-line basis. If a subordinate organization, other than a subsidiary, engages in impermissible activities, the OTS will generally deduct investments in and loans to that organization.[5] If such a subordinate organization engages solely in permissible activities, the OTS may, depending upon the nature and risk of the activity, either assign investments in and loans to that organization to the 100 percent risk-weight category or require full deduction of the investments and loans.

Collateralized Transactions

The FRB and the OCC assign a zero percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or the central governments of other countries that are members of the Organization for Economic Cooperation and Development (OECD). The OCC and the FRB rules require the collateral to be marked to market daily and a positive margin of collateral protection to be maintained daily. The FRB requires qualifying claims to be fully collateralized, while the OCC rule permits partial collateralization.

The FDIC and the OTS assign a zero percent risk weight to claims on qualifying securities firms that are collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or other OECD central governments. The FDIC and the OTS accord a 20 percent risk weight to such claims on other parties.

Noncumulative Perpetual Preferred Stock

Under the federal banking agencies' capital standards, noncumulative perpetual preferred stock is a component of Tier 1 capital. The capital standards of the OCC, the FRB, and the FDIC require noncumulative perpetual preferred stock to give the issuer the option to waive the payment of dividends and to provide that waived dividends neither accumulate to future periods nor represent a contingent claim on the issuer.

As a result of these requirements, if a bank supervised by the OCC, the FRB, or the FDIC issues perpetual preferred stock and is required to pay dividends in a form other than cash, *e.g.*, stock, when cash dividends are not or cannot be paid, the bank does not have the option to waive or eliminate dividends, and the stock would not qualify as noncumulative. If an OTS-supervised savings association issues perpetual preferred stock that requires the payment of dividends in the form of stock when cash dividends are not paid, the stock may, subject to supervisory approval, qualify as noncumulative.

Equity Securities of Government-Sponsored Enterprises

The FRB, the FDIC, and the OTS apply a 100 percent risk weight to equity securities of government-sponsored enterprises (GSEs), other than the 20 percent risk weighting of Federal Home Loan Bank stock held by banking organizations as a condition of membership. The OCC applies a 20 percent risk weight to all GSE equity securities.

Limitation on Subordinated Debt and Limited-Life Preferred Stock

The OCC, the FRB, and the FDIC limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to 50 percent of Tier 1 capital. The OTS does not prescribe such a restriction. The OTS does, however, limit the amount of Tier 2 capital to 100 percent of Tier 1 capital, as do the other agencies.

In addition, for banking organizations supervised by the OCC, the FRB, and the FDIC, at the beginning of each of the last five years of the life of a subordinated debt or limited-life preferred stock instrument, the amount that is eligible for inclusion in Tier 2 capital is reduced by 20 percent of the original amount of that instrument (net of redemptions). The OTS provides thrifts the option of using either the discounting approach used by the other federal banking agencies, or an approach which, during the last seven years of the instrument's life, allows for the full inclusion of all such instruments, provided that the aggregate amount of such instruments maturing in any one year does not exceed 20 percent of the thrift's total capital.

Pledged Deposits, Nonwithdrawable Accounts, and Certain Certificates

The OTS capital regulations permit mutual savings associations to include in Tier 1 capital pledged deposits and nonwithdrawable accounts to the extent that such accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods. The OTS also permits the inclusion of net worth certificates, mutual capital certificates, and income capital certificates complying with applicable OTS regulations in savings associations' Tier 2 capital. In the aggregate, however, these deposits, accounts, and certificates are only a negligible amount of the Tier 1 capital of OTS-supervised savings associations. The OCC, the FRB, and the FDIC do not expressly address these instruments in their regulatory capital standards, and they generally are not recognized as Tier 1 or Tier 2 capital components.

Covered Assets

The OCC, the FRB, and the FDIC generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation in the 20 percent risk-weight category. The OTS places these ''covered assets'' in the zero percent risk-weight category.

Tangible Capital Requirement

Savings associations supervised by the OTS, by statute, must satisfy a 1.5 percent minimum tangible capital requirement. Other subsequent statutory and regulatory changes, however, imposed higher capital standards rendering it unlikely, if not impossible, for the 1.5 percent tangible capital requirement to function as a meaningful regulatory trigger. This statutory tangible capital requirement does not apply to institutions supervised by the OCC, the FRB, or the FDIC.

Differences in Accounting Standards Among the Federal Banking Agencies

Push-Down Accounting

Push-down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push-down accounting, when a depository institution is acquired in a purchase, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution, as well as in any consolidated financial statements of the institution's parent.

The OCC, the FRB, and the FDIC require the use of push-down

[5] *See* 12 CFR 559.2 for the OTS's definition of subordinate organization.

accounting for regulatory reporting purposes when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission. The OTS requires the use of push-down accounting when there is at least a 90 percent change in ownership.

Dated: March 15, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 17, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated in Washington, DC, this 14th day of March, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: March 14, 2005.

By the Office of Thrift Supervision.

James Gilleran,

Director.

[FR Doc. 05–5931 Filed 3–24–05; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–4–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–4–89 (TD 8743), Sale of Residence From Qualified Personal Residence Trust (§ 25.2702–5).

DATES: Written comments should be received on or before May 24, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Sale of Residence From Qualified Personal Residence Trust.

OMB Number: 1545–1485.

Regulation Project Number: PS–4–96.

Abstract: Internal Revenue Code section 2702(a)(3) provides special favorable valuation rules for valuing the gift of a personal residence trust. Regulation section 25.2702–5(a)(2) provides that if the trust fails to comply with the requirements contained in the regulations, the trust will be treated as complying if a statement is attached to the gift tax return reporting the gift stating that a proceeding has been commenced to reform the instrument to comply with the requirements of the regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 3 hours, 7 min.

Estimated Total Annual Burden Hours: 625 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1308 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–164754–01 (NPRM)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–164754–01 (NPRM), Split-Dollar Life Insurance Arrangements.

DATES: Written comments should be received on or before May 24, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P, Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Split-Dollar Life Insurance Arrangements.

OMB Number: 1545–1792.

Regulation Project Number: REG–164754–01 (NPRM).

Abstract: The regulations relate to the income, employment, and gift taxation of split-dollar life insurance arrangements. The final regulations

provide needed guidance to persons who enter into split-dollar life insurance arrangements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 115,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 32,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1309 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4563

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4563, Exclusion of Income for Bona Fide Residents of American Samoa.

DATES: Written comments should be received on or before May 24, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Exclusion of Income for Bona Fide Residents of American Samoa.

OMB Number: 1545–0173.

Form Number: Form 4563.

Abstract: Form 4563 is used by *bona fide* residents of American Samoa to exclude income from sources within American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the IRS to determine if an individual is eligible to exclude possession source income.

Current Actions: There are no changes being made to the Form 4563 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals and households.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hr., 29 min.

Estimated Total Annual Burden Hours: 174.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1310 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209793–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209793–95 (TD 8697), Simplification of Entity Classification Rules (sec. 301.7701–3).

DATES: Written comments should be received on or before May 24, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Simplification of Entity Classification Rules.

OMB Number: 1545–1486.

Regulation Project Number: REG–209793–95.

Abstract: This regulation provides rules to allow certain unincorporated business organizations to elect to be treated as corporations or partnerships for federal tax purposes. The election is made by filing Form 8832, Entity Classification Election. The information collected on the election will be used to verify the classification of electing organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Businesses or other for-profit organizations, and state, local or tribal governments.

The burden for the collection of information in this regulation is reflected in the burden estimates of Form 8832.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1313 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–N

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–N U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

DATES: Written comments should be received on or before May 24, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

OMB Number: 1545–1776.

Form Number: 1041–N.

Abstract: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 28 hrs, 3 minutes.

Estimated Total Annual Burden Hours: 570.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1315 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209673–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209673–93 (TD 8700), Mark to Market for Dealers in Securities (§ 1.475(b)–4, and 1.475(c)–1).

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mark to Market for Dealers in Securities.

OMB Number: 1545–1496.

Regulation Project Number: REG–209673–93.

Abstract: Under section 1.475(b)–4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayers' books and records. Also, under section 1.475(c)–1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,400.

Estimated Time Per Respondents: 52 minutes.

Estimated Total Annual Burden Hours: 2,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1316 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 941c and 941cPR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 941c, Supporting Statement To Correct Information, and Form 941cPR, Planilla Para La Correccion De Informacion Facilitada Anteriormente en Cumplimiento Con La Ley Del Seguro Social Y Del Seguro Medicare.

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 941c, Supporting Statement To Correct Information, and Form 941cPR, Planilla Para La Correccion De Informacion Facilitada Anteriormente en Cumplimiento Con La Ley Del Seguro Social Y Del Seguro Medicare.

OMB Number: 1545–0256.

Form Number: Forms 941c and 941cPR.

Abstract: Form 941c (or Form 941cPR for use in Puerto Rico to correct FICA tax only) is used by employers to correct previously reported FICA or income tax data. The forms may be used to support a credit or adjustment claimed on a current return for an error in a prior return period. The information is used to reconcile wages and taxes previously reported or used to support a claim for refund, credit, or adjustment of FICA or income tax.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not-for profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 958,050.

Estimated Time Per Respondent: 9 hours, 12 minutes.

Estimated Total Annual Burden Hours: 8,729,307.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1317 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8864

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8864, Biodiesel Fuels Credit.

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Biodiesel Fuels Credit.

OMB Number: 1545–1924.

Form Number: 8864.

Abstract: The American Jobs Creation Act, act section 302, added new code section 40A, credit for biodiesel used as a fuel. Form 8864 has been developed to allow taxpayers to compute the biodiesel fuels credit. Section 38(b)(17) allows the biodiesel credit to be taken as a credit against income tax for businesses that sell or use biodiesel mixed with other fuels or sold as straight biodiesel.

Current Actions: There are no changes being made to Form 8864 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 40.

Estimated Time Per Respondent: 10 hrs., 18 min.

Estimated Total Annual Burden Hours: 412.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1318 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–23, Taxation of Canadian Retirement Plans Under U.S.-Canada Income Tax Treaty.

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxation of Canadian Retirement Plans Under U.S.-Canada Income Tax Treaty.

OMB Number: 1545–1773.

Revenue Procedure Number: Revenue Procedure 2002–23.

Abstract: Revenue Procedure 2002–23 provides guidance for the application by U.S. citizens and residents of the U.S.-Canada Income Tax Treaty, as amended by the 1995 protocol, in order to defer U.S. Income taxes on income accrued in certain Canadian retirement plans.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20,000.

Estimated Average Time Per Respondent: 30 minutes.

Estimated Total Annual Reporting Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1319 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–21, Disability Suspension.

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disability Suspension.

OMB Number: 1545–1649.

Revenue Procedure Number: Revenue Procedure 99–21.

Abstract: Revenue Procedure 99–21 describes the information that is needed to establish a claim that a taxpayer was financially disabled for purposes of section 6511(h) of the Internal Revenue Code. Under section 6511(h), the statute of limitations on claims for credit or refund is suspended for any period of an individual taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment, if the impairment can be expected to result in death, or has lasted (or can be expected to last) for a continuous period of not less than 12 months. Section 6511(h)(2)(A) requires that proof of the taxpayer's financial disability be furnished to the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 48,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 24,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1320 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209485–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209485–86 (TD 8812), Continuation Coverage Requirements Application to Group Health Plans (§§ 54.4980B–6, 54.4980B–7, and 54.4980B–8).

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Continuation Coverage Requirements Application to Group Health Plans.

OMB Number: 1545–1581.

Regulation Project Number: REG–209485–86 (TD8812).

Abstract: The regulations require group health plans to provide notices to individuals who are entitled to elect COBRA (The Consolidated Omnibus Budget Reconciliation Act of 1985) continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in a payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 1,800,000.

The estimated time per respondent varies from 30 seconds to 330 hours, depending on individual circumstances, with an estimated average of 14 minutes.

Estimated Total Annual Burden Hours: 404,640.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1321 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–62–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–62–87 (TD 8302), Low-Income Housing Credit for Federally-assisted Buildings (sec. 1.42–2(d)).

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit for Federally-assisted Buildings.

OMB Number: 1545–1005.

Regulation Project Number: PS–62–87.

Abstract: The regulation provides state and local housing credit agencies and owners of qualified low-income buildings with guidance regarding compliance with the waiver

requirement of section 42(d)(6) of the Internal Revenue Code. The regulation requires documentary evidence of financial distress leading to a potential claim against a Federal mortgage insurance fund in order to get a written waiver from the IRS for the acquirer of the qualified low-income building to properly claim the low-income housing credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1323 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–121946–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–121946–98 (TD 8861), Private Foundation Disclosure Rules (§§ 301.6104(d)–1, 301.6104(d)–2, and 301.6104(d)–3).

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P, Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Private Foundation Disclosure Rules.

OMB Number: 1545–1655.

Regulation Project Number: REG–121946–98.

Abstract: The regulations relate to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information return available for public inspection and to comply with requests for copies of those documents.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 65,065.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 32,596.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1324 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8823

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

DATES: Written comments should be received on or before May 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

OMB Number: 1545–1204.

Form Number: 8823.

Abstract: Under Internal Revenue Code section 42(m)(1)(B)(iii), state housing credit agencies are required to notify the IRS of noncompliance with the low-income housing tax credit provisions. A separate form must be filed for each building that is not in compliance. The IRS uses this information to determine whether the low-income housing credit is being correctly claimed and whether there is any credit recapture.

Current Actions: There are no changes being made to Form 8823 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State or local government housing credit agencies.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 13 hrs., 39 min.

Estimated Total Annual Burden Hours: 273,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1325 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Software Developers Conference

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Software Developers Conference notification.

SUMMARY: The Internal Revenue Service will host a Software Developers Conference on June 1–2, 2005. The conference will be held in the Renaissance Washington DC Hotel in Washington, DC. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda for June 1–2, 2005.

8 a.m. Conference Begins.
11:30 a.m. Break For Lunch.
1 p.m. Conference Resumes.
4:30 p.m. Conference Adjourns.

The planned discussion topics include:

(1) Modernized e-File (MeF).
(2) Legacy e-file and Electronic Payments.
(3) Electronic Management System (EMS) Changes.
(4) Security.
(5) Encryption.
(6) MeF Web Services Technical Discussion.
(7) International Tax XML Standards.
(8) Customer Account Data Engine (CADE) Update.

Note: Last minute changes to these topics are possible and could prevent advance notice.

DATES: The Software Developers Conference will be held on Wednesday and Thursday, June 1 and 2, 2005. This conference will be held in a room that accommodates approximately 300 people, including IRS officials.

ADDRESSES: The conference will be held in the Renaissance Washington, DC Hotel, 999 9th Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Registration for the Software Developers Conference may be accessed at *http://www.eventhotline.com/irs.* Participants should register on-line for the conference by May 31, 2005. On-site conference registration will also be available. If you need additional information you may contact Wayne Mercado at 202–283–4838 or send and e-mail to *irs.sw.conf.2005@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS Software Developers Conference provides information and dialogue on issues of interest to IRS e-file software developers.

Dated: March 17, 2005.

Beatrice D. Howell,

Acting Director, Strategic Services.

[FR Doc. E5–1314 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, April 11, 2005, at 2 p.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, April 11, 2005, at 2 p.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: March 22, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1311 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 20, 2005, at 1 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, April 20, 2005, at 1 p.m. Eastern time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy.

Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or by FAX at 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: March 22, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1312 Filed 3–24–05; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 70, No. 57

Friday, March 25, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51332, File No. SR–NYSE–2004–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, 5, 6, and 7 Thereto by the New York Stock Exchange, Inc., To Amend Its Original and Continued Quantitative Listing Standards

March 8, 2005.

Correction

In notice document E5–1132 beginning on page 12924 in the issue of Wednesday, March 16, 2005, make the following correction:

On page 12924, in the third column, the docket number should read as set forth above.

[FR Doc. Z5–1132 Filed 3–24–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March 25, 2005

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Recognition of NAIC Model Standards for Regulation of Medicare Supplemental Insurance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4080–N]

RIN 0938–AN66

Medicare Program; Recognition of NAIC Model Standards for Regulation of Medicare Supplemental Insurance

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice describes changes made by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to section 1882 of the Social Security Act (the Act), which governs Medicare supplemental insurance. This notice also recognizes that the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) on September 8, 2004, is considered to be the applicable NAIC Model Regulation for purposes of section 1882 of the Act, subject to our clarifications that are set forth in this notice. Finally, the full text of the revised NAIC Model Regulation is included as an addendum to this notice. The NAIC has granted permission for the NAIC Model Regulation to be published and reproduced. Under 1 CFR 2.6, there is no restriction on the republication of material as it appears in the **Federal Register**.

DATES: Medicare supplemental insurance policies issued in any State must conform to the requirements in the revised NAIC Model Regulation as of the date the State adopts the revised standards, which generally must be no later than September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Julie Walton, (410) 786–4622 or David Mlawsky, (410) 786–6851.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Medicare Program

The Medicare program was established by the Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical expenses for persons 65 years of age or older, certain disabled individuals, and persons with end-stage renal disease.

The Original Medicare Plan has two parts: a Part A and Part B. The ''hospital insurance program'' (Part A) covers inpatient care furnished by hospitals, critical access hospitals, and skilled nursing facilities, and care furnished by home health agencies and hospices. The ''supplementary medical insurance program'' (Part B) covers a wide range of medical services and supplies, including physicians' services, outpatient hospital services, outpatient rehabilitation services, such as physical and occupational therapy, and some home health services. Part B also covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

In addition to the Original Medicare Plan, Medicare contracts with private health plans, including managed care plans, under Part C of Medicare, the Medicare Advantage Program.

Beginning in January 2006, Medicare will also have a Voluntary Prescription Drug Benefit Program, which will be referred to as Part D of Medicare. The new Medicare Part D program is discussed in this notice under Legislative Changes Affecting Medigap Policies.

While the Original Medicare Plan provides extensive hospital insurance benefits and supplementary medical insurance, it was not designed to cover the total cost of medical care for Medicare beneficiaries. First, with respect to Medicare covered services, beneficiaries are responsible for various deductible and coinsurance amounts. In addition, there are medical expenses that are not covered by Medicare at all.

1. Deductibles

Under Part A, a beneficiary is responsible for the Part A inpatient hospital deductible for each ''benefit period.'' A benefit period is the period beginning on the first day of hospitalization and extending until the beneficiary has not been an inpatient of a hospital or skilled nursing facility for 60 consecutive days. The inpatient hospital deductible is updated annually in accordance with a statutory formula. The inpatient hospital deductible for calendar year (CY) 2004 is $876. For CY 2005, it is $912.

The Part B deductible is $100 for CY 2004. Section 629 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) requires that the Part B deductible be raised to $110 in CY 2005, and indexed in subsequent years to the increase in the average cost of Part B services for aged beneficiaries.

2. Coinsurance

As noted above, beneficiaries are responsible for paying certain coinsurance amounts for covered items and services. For example, the coinsurance applicable to physicians' services under Part B is generally 20 percent of the Medicare-approved amount for the service. When beneficiaries receive covered services from physicians who do not accept assignment of their Medicare claims, the beneficiaries may also be required to pay amounts in excess of the Medicare approved amount (''excess charges''), up to a limit established under the Act.

3. Noncovered Services

There are a number of items and services that are not covered under either Part A or Part B; for example, custodial nursing home care, most dental care, eyeglasses, and most prescription drugs are currently not covered. Thus, the Original Medicare Plan covers many health care services and supplies, but it does not cover all expenses. Therefore, most people choose to get some type of additional coverage to pay some of the costs not covered by the Original Medicare Plan. This coverage most frequently includes Medicare supplemental (Medigap) insurance or employer group health plans. Some beneficiaries may also defray some expenses with hospital indemnity insurance, nursing home or long term care insurance, or specified disease (for example, cancer) insurance.

B. Medicare Supplemental Insurance

A Medicare supplemental (Medigap) policy is a health insurance policy sold by private insurance companies to fill ''gaps'' in Original Medicare Plan coverage. A Medigap policy typically provides coverage for some or all of the deductible and coinsurance amounts applicable to Medicare-covered services, and sometimes covers items and services that are not covered by Medicare. Under current provisions of section 1882 of the Act, Medigap policies generally may not be sold unless they conform to one of the 10 standardized benefit packages that have been defined and designated as plans ''A'' through ''J'' by the National Association of Insurance Commissioners (NAIC). Three States (Massachusetts, Minnesota, and Wisconsin) are permitted by statute to have different standardized Medigap plans and are sometimes referred to in this context as the ''waiver'' States.

Three of the 10 standardized Medigap plans ''H'', ''I'', and ''J'' currently contain coverage for outpatient

prescription drugs. In addition, there are Medigap policies that were issued before the standardization requirements went into effect (''prestandardized'' Medigap plans) that cover drugs, as well as Medigap policies in the waiver States, some of which have varying levels of coverage for outpatient prescription drugs.

Section 1882 of the Act incorporates by reference, as part of the statutory requirements, certain minimum standards established by the NAIC. These minimum standards, known as the ''NAIC Model Standards,'' are found in the ''Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act,'' initially adopted by the NAIC on June 6, 1979 (see section 1882(g)(2)(A) of the Act). In particular, the Model Standards, as revised in 1992 according to the Omnibus Budget Reconciliation Act of 1990, prescribed 10 standardized benefit packages.

Section 1882(b)(1) of the Act also provides that Medigap policies issued in a State are deemed to meet the Federal requirements if the State's program regulating Medicare supplemental policies provided for the application of standards at least as stringent as those contained in the NAIC Model Regulation, and if the State requirements are equal to or more stringent than those set forth in section 1882 of the Act.

States must amend their regulatory programs to implement all new Federal statutory requirements and applicable changes to the NAIC Model Standards. Thus, States will now be required to implement the statutory changes made by MMA, and the changes to the NAIC Model Standards made to comport with the requirements of MMA, which we attach to this notice. While States generally cannot modify the standardized benefit packages set out in the NAIC Model, with respect to other provisions States do retain the authority to enact regulatory provisions that are more stringent than those that are incorporated in the NAIC Model Standards or in the statutory requirements (see section 1882(b)(1)(A) of the Act). States that have received a waiver under section 1882(p)(6) of the Act may continue to authorize the sale of policies that contain different benefits than the 10 standardized benefit packages. However, those States are also required to amend their regulatory programs to implement the new Federal statutory requirements and changes to the NAIC Model Standards as a result of the MMA.

II. Legislative Changes Affecting Medigap Policies

Section 101 of the MMA amended title XVIII of the Act by redesignating Part D as Part E and inserting a new Medicare Part D, which establishes the Voluntary Prescription Drug Benefit Program. Effective January 1, 2006, Medicare Part D establishes an optional prescription drug benefit for individuals who are entitled to or enrolled in Medicare benefits under Part A and/or Part B. Beneficiaries will be able to enroll in Part D during an ''initial enrollment period'' (IEP) that will run from November 15, 2005 through May 15, 2006. Full benefit dual eligible individuals (beneficiaries who qualify for both Medicare and Medicaid) who fail to enroll in a PDP or MA–PD during their initial enrollment period would be automatically enrolled into an appropriate Part D plan, specifically a PDP with a Part D premium that does not exceed the low-income premium subsidy amount.

The prescription drug benefit program constitutes the most significant change to the Medicare program since its inception in 1965. The addition of outpatient prescription drugs to the Medicare program reflects Congress' recognition of the fundamental change in recent years in how medical care is delivered in the U.S. It recognizes the vital role of prescription drugs in our health care delivery system and the need to modernize Medicare to assure their availability to Medicare beneficiaries.

In connection with the addition of a prescription drug benefit to Medicare, section 104 of the MMA also prescribes changes to the law applicable to Medigap policies. The most significant changes, discussed more fully in section II.A., include the prohibition against the sale of Medigap policies with prescription drug coverage (Medigap Rx policies) after December 31, 2005 and the establishment of two new standardized Medigap benefit packages that eliminate first-dollar coverage for most Medicare cost-sharing.

In addition, section 1882(v) of the Act, as added by section 104 of the MMA, requires Medigap issuers to provide a written disclosure notice to individuals who currently have a Medigap Rx policy. This notice must be provided during the 60-day period before the beginning of the Part D IEP. The MMA requires the Secretary to establish standards for this disclosure notice in consultation with the NAIC. The purpose of this disclosure notice is to inform an individual who has a Medigap Rx policy about his or her choices once the new Medicare Prescription Drug Benefit Program goes into effect on January 1, 2006. Standards for the written disclosure notice and draft model language were set forth in the preamble to the proposed rule for the Medicare Prescription Drug Benefit in the **Federal Register** on August 3, 2004 (69 FR 46632, 46760). CMS continues to develop the notice in consultation with the NAIC. We shared a revised draft of the notice with the NAIC at its spring quarterly meeting. The new draft responds to comments received on the proposed rule and incorporates the results of beneficiary focus testing.

A. Prohibition on the Sale of New Medigap Policies That Provide Drug Coverage

As of January 1, 2006, section 1882(v) of the Act will prohibit the sale of new Medigap Rx policies and require the elimination of drug coverage from Medigap Rx policies held by beneficiaries who enroll under Medicare Part D. A Medigap Rx policy issued before January 1, 2006 shall be renewed, at the option of the policyholder, if the policyholder has not enrolled in Medicare Part D. In addition, beneficiaries who do not enroll in Medicare Part D during the IEP, but choose to enroll later, will be charged higher Part D premiums unless they can establish that they had ''creditable prescription drug coverage'' before enrolling in Medicare Part D. (For more information, see the August 3, 2004 proposed rule (69 FR 46632).)

B. Elimination of Duplicative Drug Coverage Upon Part D Enrollment

Under section 1882(v) of the Act, if an individual with a Medigap Rx policy does enroll in Medicare Part D, he or she can keep the Medigap policy but the drug coverage must be eliminated and the premium for the policy must be adjusted. Alternatively, as discussed in section II.C, if an individual with a Medigap Rx policy enrolls in Medicare Part D during the IEP, the individual has certain guaranteed issue rights to buy a different Medigap policy.

C. Guaranteed Issue Rights

If an individual with a Medigap Rx policy enrolls in the Medicare Part D Prescription Drug Program during the IEP that runs from November 15, 2005 through May 15, 2006, the individual, in most cases, has the right to buy another Medigap policy that does not include drug coverage, from the same issuer. The individual has a guaranteed right to buy Plan ''A'', ''B'', ''C'', or ''F'' (including the high deductible Plan ''F'')

or one of the new Medigap benefit packages mandated by section 1882(w) of the Act, as added by section 104(b) of the MMA (designated Plan ''K'' and Plan ''L''), if these plans are offered by the issuer and available to new enrollees. The issuer may also offer other Medigap plans on a guaranteed issue basis. The guaranteed issue period begins on the date the individual receives the notice, described above, that the Medigap Rx issuer is required to send to policyholders during the 60-day period immediately preceding the initial Part D enrollment period. The guaranteed issue period ends 63 days after the effective date of the individual's Medicare Part D coverage. For example, if a beneficiary enrolls in Part D on May 15, 2006, the effective date of the Part D coverage is likely to be June 1, 2006. In this case, the beneficiary's guaranteed issue period would not end until August 2, 2006, which is 63 days after Part D coverage becomes effective.

Beneficiaries who enroll in Medicare Part D after May 15, 2006 lose the right to guaranteed issuance of a Medigap policy without outpatient drug coverage. These beneficiaries will only retain the right to keep their original Medigap policies, stripped of outpatient prescription drug coverage.

D. Development of New Standards for Medigap Policies

Section 1882(w) of the Act, added by section 104 of the MMA, requires the Secretary to request that the NAIC review and revise standards for the benefit packages authorized by subsection (p)(1) of the Act, taking into account the changes in benefits required by the MMA. Subsection (w) of the Act also requires the inclusion of two new Medigap benefit packages. These two new benefit packages have been designated by the NAIC as Plan ''K'' and Plan ''L''. These two new plans eliminate first dollar coverage for most Medicare cost-sharing and have a limit on annual out-of-pocket expenditures incurred by a policyholder. Once the out-of-pocket limit on annual expenditures is reached, the policy covers 100 percent of all cost-sharing under Medicare Parts A and B for the balance of the calendar year. For 2006, the out-of-pocket limit for Plan ''K'' is $4,000 and $2,000 for Plan ''L''. These two new plans do not cover the Medicare Part B deductible.

E. Other Changes to the NAIC Model Regulation

1. Definition of Medicare-Eligible Expenses

Payment of Medigap benefits is, in many cases, based on whether a service is one that is generally covered by Medicare. The NAIC Model Regulation accordingly contains a definition of ''Medicare eligible expenses.'' Because Medigap policies held by individuals enrolled in Medicare Part D can no longer contain any prescription drug benefits, no Medigap policy will ever supplement the Part D benefit. The definition of ''Medicare eligible expenses'' in the NAIC Model Regulation has been revised to clarify that ''Medicare eligible expenses'' means only those expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and necessary by Medicare. The revised definition clarifies that a Medigap policy does not pay cost-sharing for expenses incurred under Medicare Part D, and also more clearly states the position of the NAIC and CMS that Medigap policies do not pay cost-sharing incurred under Part C.

2. Medicare Advantage Program

Section 201 of the MMA established the Medicare Advantage program under part C of title XVIII of the Act. Medicare Part C was formerly known as ''Medicare+Choice.'' The revised NAIC Model Regulation reflects the change from ''Medicare+Choice'' to ''Medicare Advantage'' when referring to Medicare Part C.

3. Upon Exhaustion Benefit

Section 8.B. of the revised NAIC Model describes the standards for basic benefits common to plans ''A'' through ''J''. Section 8.D.(1) describes the standards for benefits common to plans ''K'' through ''L''.

Section 8.B.(3) and section 8.D.(1)(c) describe what is commonly referred to as the ''upon exhaustion'' benefit. Medicare provides inpatient hospital benefits for up to 90 days in a benefit period, plus any of the 60 ''lifetime reserve days'' that have not already been used.

After a beneficiary exhausts this coverage, including the lifetime reserve days, all Medigap policies cover 100 percent of Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of 365 days.

We note that the last sentence of section 8.B.(3) and of section 8.D.(1)(c) is not part of the benefit description of the ''upon exhaustion'' benefit. Therefore, for purposes of complying with Federal Medigap standards and requirements, that sentence is not required to be included in the text of the regulation or the drafting notes associated with those sections. Similarly, section 17.D(4) of the Model sets forth all the outlines of coverage for plans ''A'' through ''K''. Each outline contains, at the bottom of its first page, a ''Notice'' to prospective purchasers. The final sentence of this notice is not part of the benefit description, and for purposes of satisfying Federal Medigap requirements, is not required to be included.

E. Application to Waiver States

The waiver States of Massachusetts, Minnesota, and Wisconsin are also subject to the rules set forth in section 104 of the MMA relating to Medigap policies that provide outpatient prescription drug coverage. The only difference in the waiver States is that section 1882(v)(3)(C) of the Act specifies that the statutory references to benefit packages in section 1882(v)(3)(A)(i) of the Act (that is, in most cases, benefit packages designated as ''A'', ''B'', ''C'', ''F'', ''K'', and ''L'') are deemed to be references to comparable benefit packages offered in the waiver State.

III. Standardized Benefit Packages

Sections 1882(p)(8) and (p)(9) prescribe certain requirements and penalties with respect to the issuance or sale of a Medigap policy. Section 1882(p)(10) qualifies the requirements by specifying that ''no penalty may be imposed under paragraph (8) or (9) in the [case] of a seller who is not the issuer of a policy'' until the Secretary ''has published a list of the groups of benefit packages that may be sold or issued consistent with paragraph [1882(p)](1)(A)(i).'' The following list of the standardized benefit packages constitutes the publication of this list as of the date this notice is published in the **Federal Register**.

The following is a list of the standardized Medigap benefit packages, with a cross-reference to the sections of the attached NAIC Model where the packages are described in detail. The Model Regulation, adopted by the NAIC on September 8, 2004, is reprinted at the end of this notice. The NAIC has granted permission for the NAIC Model Regulation to be published and reproduced. Under 1 CFR 2.6, there is no restriction on the republication of material as it appears in the **Federal Register**.

• Plan ''A'' (Core Benefit Plan) (NAIC Model Section 9.E.(1))
• Plan ''B'' (NAIC Model Section 9.E.(2))
• Plan ''C'' (NAIC Model Section 9.E.(3))
• Plan ''D'' (NAIC Model Section 9.E.(4))
• Plan ''E'' (NAIC Model Section 9.E.(5))
• Plan ''F'' (NAIC Model Section 9.E.(6))
• Plan ''F'' High Deductible (NAIC Model Section 9.E.(7))
• Plan ''G'' (NAIC Model Section 9.E.(8))
• Plan ''H'' (NAIC Model Section 9.E.(9))
• Plan ''I'' (NAIC Model Section 9.E.(10))
• Plan ''J'' (NAIC Model Section 9.E.(11))
• Plan ''J'' High Deductible (NAIC Model Section 9.E.(12))

In addition, there are two new benefit packages added according to section 1882(w) of the Act.

• Plan ''K'' (NAIC Model Section 9.F.(1))
• Plan ''L'' (NAIC Model Section 9.F.(2))

Authority: Section 1882(v)(2)(B) and 1882(w) of the Social Security Act (42 U.S.C. 1395ss(2)(B)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 8, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Revisions to Model 651.

As adopted by the NAIC, September 8, 2004.

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Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act

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Section 1. Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under [cite appropriate section of state law providing authority for minimum benefit standards regulations or the NAIC Medicare Supplement Insurance Minimum Standards Model Act].

Editor's Note: Wherever the term ''commissioner'' appears, the title of the chief insurance regulatory official of the state should be inserted.

Section 3. Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 13, 14, 17 and 22, this regulation shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 4. Definitions

For purposes of this regulation:

A. ''Applicant'' means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. ''Bankruptcy'' means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. ''Certificate'' means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. ''Certificate form'' means the form on which the certificate is delivered or issued for delivery by the issuer.

E. ''Continuous period of creditable coverage'' means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

F. (1) ''Creditable coverage'' means, with respect to an individual, coverage of the individual provided under any of the following:

(a) A group health plan;

(b) Health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(d) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 United States Code (CHAMPUS);

(f) A medical care program of the Indian Health Service or of a tribal organization;

(g) A State health benefits risk pool;

(h) A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(i) A public health plan as defined in federal regulation; and

(j) A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

(2) ''Creditable coverage'' shall not include one or more, or any combination of, the following:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics; and

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) ''Creditable coverage'' shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(a) Limited scope dental or vision benefits;

(b) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) Such other similar, limited benefits as are specified in federal regulations.

(4) ''Creditable coverage'' shall not include the following benefits if offered as independent, noncoordinated benefits:

(a) Coverage only for a specified disease or illness; and

(b) Hospital indemnity or other fixed indemnity insurance.

(5) ''Creditable coverage'' shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(b) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(c) Similar supplemental coverage provided to coverage under a group health plan.

Drafting Note: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) specifically addresses separate, noncoordinated benefits in the group market at PHSA § 2721(d)(2) and the individual market at § 2791(c)(3). HIPAA also references excepted benefits at PHSA §§ 2701(c)(1), 2721(d), 2763(b) and 2791(c). In addition, creditable coverage has been addressed in an interim final rule (62 FR at 16960–16962 (April 8, 1997)) issued by the Secretary pursuant to HIPAA, and may be addressed in subsequent regulations.

G. ''Employee welfare benefit plan'' means a plan, fund or program of employee benefits as defined in 29 U.S.C. 1002 (Employee Retirement Income Security Act).

H. ''Insolvency'' means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

Drafting Note: If the state law definition of insolvency differs from the above definition, please insert the state law definition.

I. ''Issuer'' includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

J. ''Medicare'' means the ''Health Insurance for the Aged Act,'' Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

K. ''Medicare Advantage plan'' means a plan of coverage for health benefits under Medicare Part C as defined in [refer to definition of Medicare Advantage plan in 42 U.S.C. 1395w–28(b)(1)], and includes:

(1) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) Medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(3) Medicare Advantage private fee-for-service plans.

Drafting Note: The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) redesignates ''Medicare+Choice'' as ''Medicare Advantage'' effective January 1, 2004.

L. ''Medicare supplement policy'' means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. 1395 *et seq.*) or an issued policy under a demonstration project specified in 42 U.S.C. 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. ''Medicare supplement policy'' does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under § 1833(a)(1)(A) of the Social Security Act.

M. ''Policy form'' means the form on which the policy is delivered or issued for delivery by the issuer.

N. ''Secretary'' means the Secretary of the United States Department of Health and Human Services.

Section 5. Policy Definitions and Terms

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section.

A. ''Accident,'' ''accidental injury,'' or ''accidental means'' shall be defined to employ ''result'' language and shall not include words which establish an accidental means test or use words such as ''external, violent, visible wounds'' or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: ''Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force.''

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. ''Benefit period'' or ''Medicare benefit period'' shall not be defined more restrictively than as defined in the Medicare program.

C. ''Convalescent nursing home,'' ''extended care facility,'' or ''skilled nursing facility'' shall not be defined more restrictively than as defined in the Medicare program.

D. ''Health care expenses'' means, for purposes of Section 14, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

E. ''Hospital'' may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. ''Medicare'' shall be defined in the policy and certificate. Medicare may be substantially defined as ''The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended,'' or ''Title I, Part I of Public Law 89–97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof,'' or words of similar import.

G. ''Medicare eligible expenses'' shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

H. ''Physician'' shall not be defined more restrictively than as defined in the Medicare program.

I. ''Sickness'' shall not be defined to be more restrictive than the following:

Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force.''

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Section 6. Policy Provisions

A. Except for permitted preexisting condition clauses as described in Section 7A(1) and Section 8A(1) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.

D. (1) Subject to sections 7(A)(4), (5) and (7), and 8(A)(4) and (5), a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(2) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(3) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan and;

(b) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

Drafting Note: December 31, 2005, MMA prohibits issuers of Medicare supplement policies from renewing outpatient prescription drug benefits for both prestandardized and standardized Medicare supplement policyholders who enroll in Medicare Part D. Before May 15, 2006, these beneficiaries have two options: retain their current plan with outpatient prescription drug coverage removed and premiums adjusted appropriately; or enroll in a different policy as guaranteed for beneficiaries affected by these changes mandated by MMA and outlined in Section 12, ''Guaranteed Issue for Eligible Persons.'' After May 15, 2006 however, these beneficiaries will only retain a right to keep their original policies, stripped of outpatient prescription drug coverage, and lose the right to guaranteed issue of the plans described in Section 12.

Section 7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to [insert effective date adopted by state]

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

Drafting Note: This section has been retained for transitional purposes. The purpose of this section is to govern all policies issued prior to the date a state makes its revisions to conform to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based upon the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision so as to coincide with their particular authority.

(4) A ''noncancellable,'' ''guaranteed renewable,'' or ''noncancellable and guaranteed renewable'' Medicare supplement policy shall not:

(a) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured,

other than the nonpayment of premium; or

(b) Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8B of this regulation.

Drafting Note: Group contracts in force prior to the effective date of the Omnibus Budget Reconciliation Act (OBRA) of 1990 may have existing contractual obligations to continue benefits contained in the group contract. This section is not intended to impair such obligations.

(c) If membership in a group is terminated, the issuer shall:

(i) Offer the certificateholder the conversion opportunities described in Subparagraph (b); or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) If a Medicare supplement policy eliminates a outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Section 8. Benefit Standards for Policies or Certificates Issued or Delivered on or After [insert effective date adopted by state]

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after [insert effective date]. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based on the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision to conform with their particular authority.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified

for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder)

(i) Provides for continuation of the benefits contained in the group policy, or

(ii) Provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall

(i) Offer the certificateholder the conversion opportunity described in Section 8A(5)(c), or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) (a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss.

Drafting Note: The Ticket to Work and Work Incentives Improvement Act failed to provide for payment of the policy premiums in order to reinstitute coverage retroactively. States should consider adding the following language at the end of the last sentence in Subparagraph (c): ''and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.'' This addition will clarify that issuers are entitled to collect the premium in this situation, as they are under Subparagraph (b). Also, the Ticket to Work and Work Incentives Improvement Act of 1999 does not specify the period of time that a policy may be suspended under Section 8A(7)(c). In the event that the Centers for Medicare & Medicaid Services (CMS) provides states with guidance on this issue, the phrase ''for any period that may be provided by federal law'' has been inserted into this provision in parentheses so that any time period prescribed is incorporated by reference.

(d) Reinstitution of coverages as described in Subparagraphs (b) and (c):

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

B. Standards for Basic (Core) Benefits Common to Benefit Plans A–J.

Every issuer shall make available a policy or certificate including only the following basic ''core'' package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall

accept the issuer's payment as payment in full and may not bill the insured for any balance;

Drafting Note: The issuer is required to pay whatever amount Medicare would have paid as if Medicare was covering the hospitalization. The ''or other appropriate Medicare standard of payment'' provision means the manner in which Medicare would have paid. The issuer stands in the place of Medicare, and so the provider must accept the issuer's payment as payment in full. The Outline of Coverage specifies that the beneficiary will pay ''$0'', and the provider cannot balance bill the insured.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

Drafting Note: In all cases involving hospital outpatient department services paid under a prospective payment system, the issuer is required to pay the copayment amount established by CMS, which will be either the amount established for the Ambulatory Payment Classification (APC) group, or a provider-elected reduced copayment amount.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans ''B'' through ''J'' only as provided by Section 9 of this regulation.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, ''emergency care'' shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit: Coverage for the following preventive health services not covered by Medicare:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (b) and patient education to address preventive health care measures;

(b) Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) ''Activities of daily living'' include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) ''Care provider'' means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) ''Home'' shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) ''At-home recovery visit'' means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations:

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) Seven (7) visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in this section;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

Drafting Note: The Omnibus Budget Reconciliation Act 1990, 42 U.S.C. 1395ss(p)(7), does not prohibit the issuers of Medicare supplement policies, through an arrangement with a vendor for discounts from the vendor, from making available discounts from the vendor to the policyholder or certificateholder for the purchase of items or services not covered under its Medicare supplement policies (for example: discounts on hearing aids or eyeglasses).

Drafting Note: The NAIC discussed including inflation protection for at-home recovery benefits, and preventive care benefits. However, because of the lack of an appropriate mechanism for indexing these benefits, NAIC has not included indexing at this point in time. However, NAIC is committed to evaluating the effectiveness of these benefits without inflation protection, and will revisit the issue. NAIC has determined that OBRA does not authorize NAIC to delegate the authority for indexing these benefits to a federal agency without an amendment to federal law.

D. Standards for Plans K and L.

(1) Standardized Medicare supplement benefit plan ''K'' shall consist of the following:

(a) Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(b) Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph (j);

(e) Skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph (j);

(f) Hospice Care: Coverage for 50% of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph (j);

(g) Coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subparagraph (j);

(h) Except for coverage provided in subparagraph (i) below, coverage for 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph (j) below;

(i) Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(2) Standardized Medicare supplement benefit plan ''L'' shall consist of the following:

(a) The benefits described in Paragraphs (1)(a),(b),(c) and (i);

(b) The benefit described in Paragraphs (1)(d), (e), (f), (g) and (h), but substituting 75% for 50%; and

(c) The benefit described in Paragraph (1)(j), but substituting $2000 for $4000.

Section 9. Standard Medicare Supplement Benefit Plans

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Section 9(G) and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans ''A'' through ''L'' listed in this subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8B and 8C,or 8D and list the benefits in the order shown in this subsection. For purposes of this section, ''structure, language, and format'' means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.

Drafting Note: It is anticipated that if a state determines that it will authorize the sale of only some of these benefit plans, the letter codes used in this regulation will be preserved. The Guide to Health Insurance for People with Medicare published jointly by the NAIC and CMS will contain a chart comparing the possible combinations. In order for consumers to compare specific policy choices, it will be important that a uniform ''naming'' system be used. Thus, if only plans ''A,'' ''B,'' ''D,'' ''F (including F with a high deductible)'' and ''H'' (for example) are authorized in a state, these plans should retain these alphabetical designations. However, an issuer may use, in addition to these alphabetical designations, other designations as provided in Section 9D of this regulation.

E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan ''A'' shall be limited to the basic (core) benefits common to all benefit plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan ''B'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan ''C'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A

deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan ''D'' shall include only the following: The core benefit (as defined in Section 8B of this regulation), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Sections 8C(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan ''E'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Sections 8C(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan ''F'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan ''F'' shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan ''F'' deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (3), (5) and (8) respectively. The annual high deductible plan ''F'' deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan ''F'' policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan ''F'' deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan ''G'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Sections 8C(1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan ''H'' shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (6) and (8) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(10) Standardized Medicare supplement benefit plan ''I'' shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Sections 8C(1), (2), (5), (6), (8) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(11) Standardized Medicare supplement benefit plan ''J'' shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Sections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(12) Standardized Medicare supplement benefit high deductible plan ''J'' shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan ''J'' deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Sections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan ''J'' deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan ''J'' policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

F. Make-up of two Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA);

(1) Standardized Medicare supplement benefit plan ''K'' shall consist of only those benefits described in Section 8 D(1).

(2) Standardized Medicare supplement benefit plan ''L'' shall consist of only those benefits described in Section 8 D(2).

G. New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Drafting Note: Use of new or innovative benefits may be appropriate to add coverage or access if they offer uniquely different or significantly expanded coverage.

Drafting Note: A state may determine by statute or regulation which of the above benefit plans may be sold in that state. The core benefit plan must be made available by all issuers. Therefore, the core benefit plan must be one of the authorized benefit plans adopted by a state. In no event, however, may a state authorize the sale of more than 10 standardized Medicare supplement benefit plans (that is, 9 plus the core policy), plus the two (2) high deductible plans, and the two (2) benefit plans K and L, mandated by MMA at the same time. Further, the modified versions of plans H, I, J as required by MMA after December 31, 2005 will not count as additional plans toward the limitations on the total number of plans discussed above.

Drafting Note: The Omnibus Budget Reconciliation Act of 1990 preempts state mandated benefits in Medicare supplement policies or certificates, except for those states which have been granted a waiver for nonstandardized plans.

Drafting Note: After December 31, 2005 MMA prohibits Medicare supplement issuers from offering policies with outpatient prescription drug coverage, and from renewing outpatient prescription drug coverage for insureds enrolled in Medicare Part D. Consequently, plans with an outpatient prescription drug benefit will not be offered to new enrollees after such time.

Drafting Note: Pursuant to the enactment of MMA, two new benefit packages, called K and L, were added to plans A through J. The two new packages have higher copayments and coinsurance contributions from the Medicare beneficiary.

Section 10. Medicare Select Policies and Certificates

A. (1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

Drafting Note: This section should be adopted by all states approving Medicare Select policies.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) ''Complaint'' means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) ''Grievance'' means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) ''Medicare Select issuer'' means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) ''Medicare Select policy'' or ''Medicare Select certificate'' mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) ''Network provider'' means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) ''Restricted network provision'' means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) ''Service area'' means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(e) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) The formal organizational structure;

(b) The written criteria for selection, retention and removal of network providers; and

(c) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F. (1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) Other Medicare supplement policies or certificates offered by the issuer; and

(b) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 11. Open Enrollment

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

B. (1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

Drafting Note: The Secretary has developed regulations pursuant to HIPAA regarding methods of counting creditable coverage, which govern the way the reduction is to be applied in Section 11B(2).

C. Except as provided in Subsection B and Sections 12 and 23, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

Section 12. Guaranteed Issue for Eligible Persons

A. Guaranteed Issue

(1) Eligible persons are those individuals described in Subsection B who seek to enroll under the policy during the period specified in Subsection C, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection E that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons

An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

Drafting Note: Paragraph (1) above uses the federal legislative language from the Balanced Budget Act of 1997 (Pub. L. 105–33) that defines an eligible person as an individual with respect to whom an employee welfare benefit plan terminates, or ceases to provide ''all'' health benefits that supplement Medicare. There was protracted discussion among the drafters about the interpretation of ''all'' in this context: if the employer drops some supplemental benefits, but not all such benefits, from its welfare plan, should the individual be eligible for a guaranteed issue Medicare supplement product? This question may become crucial to certain individuals depending on the benefits dropped by the employer. Federal legislative history appears to indicate the intention that the word ''all'' be strictly construed so as to require termination or cessation of all supplemental health benefits. States, however, can provide greater protections to beneficiaries and may wish to include, as eligible persons, individuals who have lost ''some or all'' or ''substantially all'' of their supplemental health benefits, to encompass situations where a change is made in an employee welfare benefit plan that reduces the amount of supplemental health benefits available to the individual. States that consider alternative language are reminded to consider the impact of issues such as plan changes that result in adverse selection, duplicate coverage, triggering the requirement for plan administrator notice (see Section 12D) and other issues.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(a) The certification of the organization or plan has been terminated;

(b) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(c) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;

(d) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(e) The individual meets such other exceptional conditions as the Secretary may provide.

(3) (a) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 12B(2).

Drafting Note: Paragraph (3)(a)(iv) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare Select policies or certificates.

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a) (i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy;

(b) The issuer of the policy substantially violated a material provision of the policy; or

(c) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

Drafting Note: The reference to ''insolvency of the issuer'' in Paragraph 4(a) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare supplement policies or certificates.

(5) (a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894

of the Social Security Act or a Medicare Select policy; and

(b) The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment.

(7) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection E(4).

Drafting Note: Federal law provides a guaranteed issue right to a Medicare supplement insurance product to individuals who enroll in Medicare Part B at age 65. States may wish to consider extending this right to other classes of individuals, such as those who postpone enrollment in Medicare Part B until after age 65 because they are working and are enrolled in a group health insurance plan.

Drafting Note: Paragraph 7 does not preclude an individual from applying for a new Medigap policy without drug coverage while still enrolled in the policy with drug coverage. The issuer will terminate the drug policy when it issues the new policy without drug coverage.

C. Guaranteed Issue Time Periods

(1) In the case of an individual described in Subsection B(1), the guaranteed issue period begins on the later of: (i) the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or (ii) The date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter;

(2) In the case of an individual described in Subsection B(2), B(3), B(5) or B(6) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(3) In the case of an individual described in Subsection B(4)(a), the guaranteed issue period begins on the earlier of: (i) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated;

(4) In the case of an individual described in Subsection B(2), B(4)(b), B(4)(c), B(5) or B(6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date;

(5) In the case of an individual described in Subsection B(7), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(6) In the case of an individual described in Subsection B but not described in the preceding provisions of this Subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.

D. Extended Medigap Access for Interrupted Trial Periods

(1) In the case of an individual described in Subsection B(5) (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in Subsection B(5)(a) is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 12B(5);

(2) In the case of an individual described in Subsection B(6) (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in Subsection B(6) is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 12B(6); and

(3) For purposes of Subsections B(5) and B(6), no enrollment of an individual with an organization or provider described in Subsection B(5)(a), or with a plan or in a program described in Subsection B(6), may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

E. Products To Which Eligible Persons Are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

(1) Section 12B(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer.

(2) (a) Subject to subparagraph (b), Section 12B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Paragraph (1);

(b) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with a outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:

(i) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(ii) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer;

(3) Section 12B(6) shall include any Medicare supplement policy offered by any issuer;

(4) Section 12B(7) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

Drafting Note: Under federal law, for states that have an alternative form of standardization under a federal waiver and offer benefit packages other than Plans A through L, the references to benefit packages above are deemed references to comparable benefit packages offered in that state. Those

states should amend the language accordingly.

F. Notification Provisions

(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 12A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

Drafting Note: States should ensure that educational and public information materials it develops related to Medicare includes a thorough description of the rights outlined in Section 12F.

Section 13. Standards for Claims Payment

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. 100–203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

Section 14. Loss Ratio Standards and Refund or Credit of Premium

A. Loss Ratio Standards.

(1) (a) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or

(ii) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies;

(b) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying Subsection A(1) of this section and Subsection C(3) of Section 15 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

Drafting Note: Subsection A(3) replicates language contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). It allows direct mail group policies sold on an individual basis to meet the minimum loss ratio required of individual business (65%) rather than that required of group business (75%). The NAIC eliminated this concept from this regulation in 1987 (I Proceedings of the NAIC, pp. 651, 673 (1988)). At that time, NAIC required direct mail group business to meet the same loss ratio requirement as other group business, regardless of whether the business was sold on an individual basis. The NAIC encourages states to apply the 75% loss ratio to all group business. Although NAIC is restricted from making revisions to its models that are not in conformance with OBRA 1990, states are free to impose more stringent requirements than OBRA.

(4) For policies issued prior to [insert effective date from Section 24 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], expected claims in relation to premiums shall meet:

(a) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) when combined with actual experience beginning with [insert effective date of this revision] to date; and

(c) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

Drafting Note: The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) for all group policies subject to an individual loss ratio standard when issued is 65 percent. States may amend Section 13A(4) to permit or require aggregation of closed blocks of business upon approval of CMS.

B. Refund or Credit Calculation.

(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio

3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to [insert effective date from Section 24 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after the [insert effective date of this amendment]. The first report shall be due by May 31, [insert (effective year + 2) of this amendment].

Drafting Note: Subsection B(3) implements the requirements of Section 171 of the Social Security Act Amendments of 1994 that require a refund or credit calculation for prestandardized Medicare supplement policies, but only for experience subsequent to the date the state amends its regulation.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a *de minimis* level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of Premium Rates.

An issuer of Medicare supplement policies and certificates issued before or after the effective date of [insert citation to state's regulation] in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(1) (a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings.

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of [insert citation to state's regulation] if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

Drafting Note: This section does not in any way restrict a commissioner's statutory authority, elsewhere granted, to approve or disapprove rates.

Section 15. Filing and Approval of Policies and Certificates and Premium Rates

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

C. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

D. (1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage;

(d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a ''type'' means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

Drafting Note: As a result of MMA, issuers now may have H, I, and J (including J with a high deductible) both with and without outpatient prescription drug coverage. The language in Subsection D is flexible enough

to allow the issuer and regulator to incorporate this factor to allow for additional policy forms.

E. (1) Except as provided in Paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

F. (1) Except as provided in Paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in [insert citation to Section 14 of NAIC Medicare Supplement Insurance Model Regulation].

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Drafting Note: It has come to the attention of the NAIC that the use of attained age rating in the determination of rates in Medicare supplement policies may result in situations to which a regulatory response is desirable. States should assess their Medicare supplement marketplace to determine whether a regulatory response is needed. The following provisions may be included as a new subsection to Section 15. The first option prohibits insurers from attained age rating as a methodology for setting rates. The second option does not prohibit the use of attained age rating but requires Medicare supplement insurers who do use attained age rating as a rate setting methodology to apply the age component to its rates annually. The effective date of the regulation should provide sufficient time for insurers to re-rate approved policy forms in accordance with Section 15A and for the insurance department to approve (according to its rate filing practices and procedures), such re-ratings prior to the effective date of the regulation.

Option 1.

G. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon attained age rating as a structure or methodology.

Option 2.

G. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

Drafting Note: State insurance regulators are encouraged to consider whether it is necessary to require issuers to file new forms where the only changes in the forms reflect year-to-year modifications in Medicare deductible and coinsurance amounts.

Section 16. Permitted Compensation Arrangements

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.

C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, ''compensation'' includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

Section 17. Required Disclosure Provisions

A. General Rules

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing and signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a

separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as ''usual and customary,'' ''reasonable and customary'' or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as ''Preexisting Condition Limitations.''

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and CMS and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, ''form'' means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements

(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(b) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

C. MMA Notice Requirements

Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

D. Outline of Coverage Requirements for Medicare Supplement Policies

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.''

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A–L shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

BILLING CODE 4120–01–P

[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page: 1 of 2

Benefit Plans _____[insert letters of plans being offered

These charts show the benefits included in each of the standard Medicare supplement plans. Every company must make available Plan "A." Some plans may not be available in your state.

See Outlines of Coverage sections for details about ALL plans

Basic Benefits for Plans A - J:
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses) or copayments for hospital outpatient services.
Blood: First three pints of blood each year.

A	B	C	D	E	F F*	G	H	I	J J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
				Preventive Care NOT covered by Medicare					Preventive Care NOT covered by Medicare

*** Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same benefits as Plans F and J after one has paid a calendar year [$1690] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses exceed [$1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include the plan's separate foreign travel emergency deductible.**

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page 2

Basic Benefits for Plans K and L include similar services as plans A-J, but cost-sharing for the basic benefits is at different levels.

J	K**	L**
Basic Benefits	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 50% Hospice cost-sharing 50% of Medicare-eligible expenses for the first three pints of blood 50% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 75% Hospice cost-sharing 75% of Medicare-eligible expenses for the first three pints of blood 75% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services
Skilled Nursing Coinsurance	50% Skilled Nursing Facility Coinsurance	75% Skilled Nursing Facility Coinsurance
Part A Deductible	50% Part A Deductible	75% Part A Deductible
Part B Deductible		
Part B Excess (100%)		
Foreign Travel Emergency		
At-Home Recovery		
Preventive Care NOT covered by Medicare		
	$[4000] Out of Pocket Annual Limit***	$[2000] Out of Pocket Annual Limit***

**** Plans K and L provide for different cost-sharing for items and services than Plans A – J.**
Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of the calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare-approved amounts, called "Excess Charges". You will be responsible for paying excess charges.

****The out-of-pocket annual limit will increase each year for inflation.**

See Outlines of Coverage for details and exceptions.

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

DISCLOSURES [Boldface Type]

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE [Boldface Type]

This policy may not fully cover all of your medical costs.

[for agents:]
Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]
[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult *Medicare and You* for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and

refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9D of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

PLAN A

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$0	$[876](Part A deductible)
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[109.50] a day	$0	Up to $[109.50] a day
101st day and after	$0	$0	All costs

BLOOD First 3 pints Additional amounts	 $0 100%	 3 pints $0	 $0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN A

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*	Generally 80%	Generally 20%	$0
Remainder of Medicare Approved Amounts			
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*			
Remainder of Medicare Approved Amounts	80%	20%	$0

PLAN B

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876](Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[109.50] a day	$0	Up to $[109.50] a day
101st day and after	$0	$0	All costs

BLOOD First 3 pints Additional amounts	 $0 100%	 3 pints $0	 $0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN B

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*	80%	20%	$0
Remainder of Medicare Approved Amounts			

(continued)

PLAN C

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876](Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN C

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,	$0	$[100] (Part B deductible)	$0
First $[100] of Medicare Approved Amounts*	Generally 80%	Generally 20%	$0
Remainder of Medicare Approved Amounts			
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$[100] (Part B deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment	$0	$[100] (Part B deductible)	$0
First $[100] of Medicare Approved Amounts*	80%		$0
Remainder of Medicare Approved Amounts		20%	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
FOREIGN TRAVEL— NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA	$0	$0	$250
First $250 each calendar year	$0	80% to a lifetime maxi-mum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
Remainder of Charges			

PLAN D

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876] (Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:		$0	
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN D

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN D

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*			
Remainder of Medicare Approved Amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
—Benefit for each visit	$0	Actual charges to $40 a visit	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
—Calendar year maximum	$0	$1,600	

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA	$0	$0	$250
First $250 each calendar year	$0	80% to a lifetime maxi-mum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
Remainder of charges			

PLAN E

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876] (Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN E

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*	Generally 80%	Generally 20%	$0
Remainder of Medicare Approved Amounts			
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

PLAN E

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA	$0	$0	$250
First $250 each calendar year	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
Remainder of Charges			
****PREVENTIVE MEDICAL CARE BENEFIT—NOT COVERED BY MEDICARE**			
Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

**Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[This high deductible plan pays the same benefits as Plan F after one has paid a calendar year [$1690] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [$1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,**] YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies	All but $[876]	$[876] (Part A deductible)	$0
First 60 days	All but $[219] a day	$[219] a day	$0
61st thru 90th day			
91st day and after:			
While using 60 Lifetime reserve days	All but $[438] a day	$[438] a day	$0
Once lifetime reserve days Are used:	$0	100% of Medicare eligible expenses	$0***
Additional 365 days	$0	$0	All costs
Beyond the additional 365 days			

SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital	All approved amounts	$0	$0
First 20 days	All but $[109.50] a day	Up to $[109.50] a day	$0
21st thru 100th day	$0	$0	All costs
101st day and after			
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsur-ance for out-patient drugs and inpatient respite care	$0	Balance

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year. **[**This high deductible plan pays the same benefits as Plan F after one has paid a calendar year [$1690] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [$1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,**] YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, Such as physician's Services, inpatient and Outpatient medical and Surgical services and Supplies, physical and Speech therapy, Diagnostic tests, Durable medical Equipment,			
First $[100] of Medicare Approved amounts*	$0	$[100] (Part B deductible)	$0
Remainder of Medicare Approved amounts	Generally 80%	Generally 20%	$0

Part B excess charges (Above Medicare Approved Amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved amounts*	$0	$[100] (Part B deductible)	$0
Remainder of Medicare Approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—-TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN F or HIGH DEDUCTIBLE PLAN F

PARTS A & B

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,**] YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $[100] of Medicare approved Amounts*	$0	$[100] (Part B deductible)	$0
Remainder of Medicare approved Amounts	80%	20%	$0

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,**] YOU PAY

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary Emergency care services Beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN G

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876] (Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN G

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	80%	20%
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN G

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*	80%	20%	$0
Remainder of Medicare Approved Amounts			
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan	$0	Actual charges to $40 a visit	Balance
—Benefit for each visit	$0		
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	$0	Up to the number of Medicare-approved visits, not to exceed 7 each week	
—Calendar year maximum		$1,600	

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA	$0	$0	$250
First $250 each calendar year	$0	80% to a lifetime maxi-mum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
Remainder of Charges			

PLAN H

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876] (Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN H

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*	Generally 80%	Generally 20%	$0
Remainder of Medicare Approved Amounts			
Part B Excess Charges (Above Medicare Approved Amounts)	$0	0%	All Costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*			
Remainder of Medicare Approved Amounts	80%	20%	$0

(continued)

PLAN H

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA	$0	$0	$250
First $250 each calendar year	$0	80% to a lifetime max-imum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
Remainder of charges			

PLAN I

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876] (Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0**
—Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital	All approved amounts	$0	$0
First 20 days		Up to $[109.50] a day	$0
21st thru 100th day	All but $[109.50] a day	$0	All costs
101st day and after	$0		
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN I

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$0	$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN I

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment	$0	$0	$[100] (Part B deductible)
First $[100] of Medicare Approved Amounts*	80%	20%	$0
Remainder of Medicare Approved Amounts			
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan	$0	Actual charges to $40 a visit	Balance
—Benefit for each visit	$0	Up to the number of Medicare-approved visits, not to exceed 7 each week	
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	$0	$1,600	
—Calendar year maximum			

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year Remainder of charges	$0 $0	$0 80% to a lifetime maxi-mum benefit of $50,000	$250 20% and amounts over the $50,000 lifetime maximum

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[This high deductible plan pays the same benefits as Plan J after one has paid a calendar year [$1690] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are [$1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate outpatient prescription drug deductible or the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,**] YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[876] (Part A deductible)	$0
61st thru 90th day	All but $[219] a day	$[219] a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare eligible expenses	$0***
—Beyond the additional 365 days	$0	$0	All costs

SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but $[109.50] a day $0	$0 Up to $[109.50] a day $0	$0 $0 All costs
BLOOD First 3 pints Additional amounts	$0 100%	3 pints $0	$0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year. **[**This high deductible plan pays the same benefits as Plan J after one has paid a calendar year [$1690] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are [$1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate outpatient prescription drug deductible or the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,** *] YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$0	$[100] (Part B deductible)	$0
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All Costs	$0
Next $[100] of Medicare Approved Amounts*	$0	$[100] (Part B deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN J or HIGH DEDUCTIBLE PLAN J

PARTS A & B

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE, **] YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $[100] of Medicare Approved Amounts*	$0	$[100] (Part B deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
HOME HEALTH CARE (cont'd) AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan	$0	Actual charges to $40 a visit	Balance
—Benefit for each visit			
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
—Calendar year maximum	$0	$1,600	

(continued)

PLAN J or HIGH DEDUCTIBLE PLAN J

PARTS A & B

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,**] YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year Remainder of charges	$0 $0	$0 80% to a lifetime maxi-mum benefit of $50,000	$250 20% and amounts over the $50,000 lifetime maximum
***PREVENTIVE MEDICAL CARE BENEFIT—NOT COVERED BY MEDICARE** Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare First $120 each calendar year Additional charges	$0 $0	$120 $0	$0 All costs

***Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

PLAN K

* You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[4000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies	All but $[876]	$[438](50% of Part A deductible)	$[438](50% of Part A deductible)♦
First 60 days	All but $[219] a day	$[219] a day	$0
61st thru 90th day			$0
91st day and after:			
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0***
—Once lifetime reserve days are used:	$0	100% of Medicare eligible expenses	All costs
—Additional 365 days	$0	$0	
—Beyond the additional 365 days			

SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but $[109.50] a day $0	$0 Up to $[54.75] a day $0	$0 Up to $[54.75] a day ♦ All costs
BLOOD First 3 pints Additional amounts	$0 100%	50% $0	50%♦ $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	50% of coinsurance or copayments	50% of coinsurance or copayments♦

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN K

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,	$0	$0	$[100] (Part B deductible)**** ♦
First $[100] of Medicare Approved Amounts****	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Preventive Benefits for Medicare covered services	Generally 80%	Generally 10%	Generally 10% ♦
Remainder of Medicare Approved Amounts			
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs (and they do not count toward annual out-of-pocket limit of [$4000])*

BLOOD First 3 pints Next $[100] of Medicare Approved Amounts**** Remainder of Medicare Approved Amounts	$0 $0 Generally 80%	50% $0 Generally 10%	50%♦ $[100] (Part B deductible)**** ♦ Generally 10% ♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[4000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN K

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies —Durable medical equipment First $[100] of Medicare Approved Amounts***** Remainder of Medicare Approved Amounts	 100% $0 80%	 $0 $0 10%	 $0 $[100] (Part B deductible) ♦ 10%♦

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

PLAN L

* You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[2000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[657] (75% of Part A deductible)	$[219] (25% of Part A deductible)♦
61st thru 90th day	All but $[219] a day	$[219] a day	
91st day and after:			$0
—While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0
—Once lifetime reserve days are used:	$0	100% of Medicare eligible expenses	$0***
—Additional 365 days	$0	$0	All costs
—Beyond the additional 365 days			

SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	 All approved amounts All but $[109.50] a day $0	 $0 Up to $[82.13] a day $0	 $0 Up to $[27.37] a day♦ All costs
BLOOD First 3 pints Additional amounts	 $0 100%	 75% $0	 25%♦ $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	75% of coinsurance or copayments	25% of coinsurance or copayments ♦

(continued)

***** NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN L

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First $[100] of Medicare Approv	$0	$0	$[100] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs (and they do not count toward annual out-of-pocket limit of [$2000])*
BLOOD First 3 pints	$0	75%	25%♦
Next $[100] of Medicare Approved Amounts****	$0	$0	$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5%♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[2000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN L

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment First $[100] of Medicare Approved Amounts*****	$0	$0	$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	80%	15%	5% ♦

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

E. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395 et seq.), disability income policy, or other policy identified in Section 3B of this regulation, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 18. Requirements for Application Forms and Replacement Coverage

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

[Statements]

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary(SLMB).

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or

more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark Yes or No below with an "X"]
To the best of your knowledge,

(1) (a) Did you turn age 65 in the last 6 months?

Yes____ No____

(b) Did you enroll in Medicare Part B in the last 6 months?

Yes____ No____

(c) If yes, what is the effective date? _____

(2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes____ No____

If yes,

(a) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes____ No____

(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes____ No____

(3) (a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START __/__/__ END __/__/__

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes____ No____

(c) Was this your first time in this type of Medicare plan?

Yes____ No____

(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes____ No____

(4) (a) Do you have another Medicare supplement policy in force?

Yes____ No____

(b) If so, with what company, and what plan do you have [optional for Direct Mailers]?

_____

(c) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes____ No____

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes____ No____

(a) If so, with what company and what kind of policy?

_____

_____

_____

_____

(b) What are your dates of coverage under the other policy?

START __/__/__ END __/__/__

(If you are still covered under the other policy, leave "END" blank.)

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five (5) years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

____ Additional benefits.

____ No change in benefits, but lower premiums.

____ Fewer benefits and lower premiums.

____ My plan has outpatient prescription drug coverage and I am enrolling in Part D.

____ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. [optional only for Direct Mailers.]

_____ _____

_____

____ Other. (please specify)

_____

1. **Note:** If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement 2 below. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

_____

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

_____

(Applicant's Signature)

_____

(Date)

*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

Section 19. Filing Requirements for Advertising

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law.

Drafting Note: States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

Section 20. Standards for Marketing

A. An issuer, directly or through its producers, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(5) Establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in [insert citation to state unfair trade practices act], the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

Drafting Note: Remember that the Unfair Trade Practice Act in your state applies to Medicare supplement insurance policies and certificates.

Section 21. Appropriateness of Recommended Purchase and Excessive Insurance

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

C. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

Section 22. Reporting of Multiple Policies

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) Policy and certificate number, and

(2) Date of issuance.

B. The items set forth above must be grouped by individual policyholder.

Editor's Note: Appendix B contains a reporting form for compliance with this section.

Section 23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods

applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

Drafting Note: Although NAIC is restricted from making revisions to its models that do not conform to the Omnibus Budget Reconciliation Act of 1990, states are encouraged to consider deletion of the words "for similar benefits" in Subsection A and the words "for benefits similar to those contained in the original policy or certificate" in Subsection B. States should eliminate Paragraphs (1) and (2) (applicable to preexisting conditions) of the replacement notice required by Section 16E.

Section 24. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 25. Effective Date

This regulation shall be effective on [insert date].

APPENDIX A

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

Line		(a) Earned Premium[3]	(b) Incurred Claims[4]
1.	Current Year's Experience		
	a. Total (all policy years)		
	b. Current year's issues[5]		
	c. Net (for reporting purposes =1a–1b		
2.	Past Years' Experience (all policy years)		
3.	Total Experience (Net Current Year +Past Year)		
4.	Refunds Last Year (Excluding Interest)		
5.	Previous Since Inception (Excluding Interest)		
6.	Refunds Since Inception (Excluding Interest)		
7.	Benchmark Ratio Since Inception (*see worksheet for Ratio 1*)		
8.	Experienced Ratio Since Inception (*Ratio 2*) Total Actual Incurred Claims (line 3, col. b) / Total Earned Prem. (line 3, col. a)–Refunds Since Inception (line 6)		
9.	Life Years Exposed Since Inception If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.		
10.	Tolerance Permitted (obtained from credibility table)		

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000 -9,999	5.0%
2,500 -4,999	7.5%
1,000 -2,499	10.0%
500 - 999	15.0%

If less than 500, no credibility.

1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
2 "SMSBP" =Standardized Medicare Supplement Benefit Plan - Use "P" for prestandardized plans.
3 Includes Modal Loadings and Fees Charged
4 Excludes Active Life Reserves
5 This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

11.	Adjustment to Incurred Claims for Credibility Ratio 3 =Ratio 2 +Tolerance	

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required. If Ratio 3 is less than the Benchmark Ratio, then proceed.

12.	Adjusted Incurred Claims [Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6)] x Ratio 3 (line 11)	
13.	Refund = Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6) –[Adjusted Incurred Claims (line 12)/Benchmark Ratio (Ratio 1)]	

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund or credit against premiums to be used must be attached to this form.

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name - Please Type

_____
Title - Please Type

_____
Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of_____ Company Name _____
NAIC Group Code_____ NAIC Company Code_____
Address _____ Person Completing Exhibit_____
Title _____ Telephone Number _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15+[6]		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l +n)/(k +m): _____

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2] "SMSBP" =Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

[3] Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4] For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5] These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

[6] To include the earned premium for all years prior to as well as the 15th year prior to the current year.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of_____ Company Name _____
NAIC Group Code_____ NAIC Company Code_____
Address _____ Person Completing Exhibit_____
Title _____ Telephone Number _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15+[6]		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l +n)/(k +m): _____

Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

"SMSBP" =Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year is 1990; Year 2 is 1989, etc.)

For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

To include the earned premium for all years prior to as well as the 15th year prior to the current year.

APPENDIX B

FORM FOR REPORTING MEDICARE SUPPLEMENT POLICIES

Company Name: _____

Address: _____

_____

Phone Number: _____

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

_____
Signature

_____
Name and Title (please type)

_____
Date

APPENDIX C

DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Section 1882 (d) of the federal Social Security Act [42 U.S.C. 1395ss] prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).
3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.
7. The federal law does not preempt state laws that are more stringent than the federal requirements.
8. The federal law does not preempt existing state form filing requirements.
9. Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix C remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items & services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Original disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior] [health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

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[Alternative disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items & services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or your state [senior][health] insurance [counseling][assistance] program [SHIP].

Drafting Note: Insurers insert reference to: outpatient prescription drugs and state health insurance assistance program (SHIP) above when new notices need to be printed after December 31, 2005.

[FR Doc. 05–5816 Filed 3–24–05; 8:45 am]
BILLING CODE 4120–01–C

Federal Register

Friday,
March 25, 2005

Part III

Department of Labor

Employment and Training Administration

Workforce Investment Act and Wagner-Peyser Act Preliminary Allotments; FY 2005 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Allotments; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Fiscal Year (FY) 2005 Congressional Rescissions for WIA Adults and Dislocated Workers; Program Year (PY) 2005 Workforce Investment Act (WIA Allotments and Additional Funds From WIA Section 173(e) for Adult/Dislocated Worker Activities for Eligible States; PY 2005 Wagner-Peyser Act Preliminary Allotments; Reemployment Services Allotments; PY 2005 Workforce Information Grants; and FY 2005 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces FY 2005 Congressional Rescissions for WIA Adults and Dislocated Worker programs, states' allotments for PY 2005 (July 1, 2005–June 30, 2006) for WIA Title I Youth, Adults and Dislocated Worker programs; additional PY 2005 funding from WIA Section 173(e) for eligible states; preliminary allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2005; Workforce Information Grants for PY 2005; and Work Opportunity Tax Credit and Welfare-to-Work Tax Credit allotments for FY 2005.

The WIA allotments for states and the preliminary allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas (American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Virgin Islands) was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, **Federal Register** notice. The formula for PY 2005 is the same as used for PY 2000 and is described in the section on Youth allotments. The data for the outlying areas was obtained from the Bureau of the Census and was based on 2000 census surveys for those areas conducted either by the Bureau or the outlying areas. Comments are invited upon the formula used to allot funds to the outlying areas.

DATES: Comments must be received by April 25, 2005.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave., NW., Room N–4702, Washington, DC 20210, Attention: Ms. Sherryl Bailey, 202–693–2813 (phone), 202–693–2859 (fax), e-mail: *bailey.sherryl@dol.gov*.

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments: Haskel Lowery at 202–693–3030 or LaSharn Youngblood at 202–693–3606; WIA Adult and Dislocated Worker Employment and Training Activities allotments: Raymond Palmer at 202–693–3535; and Employment Service preliminary allotments: Anthony Dais at 202–693–3046 (these are not toll-free numbers). Information may also be found at the Web site—*http://www.doleta.gov*.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing WIA allotments for PY 2005 (July 1, 2005–June 30, 2006) for Youth Activities, Adults and Dislocated Worker Activities, and Wagner-Peyser Act PY 2005 preliminary allotments. This document provides information on the amount of funds available during PY 2005 to states with an approved WIA Title I and Wagner-Peyser 2-Year Strategic Plan (formally the 5-Year Strategic Plan) and information regarding allotments to the outlying areas. The allotments are based on the funds appropriated in the Consolidated Appropriations Act, 2005, Public Law 108–477, December 8, 2004. This appropriation requires an across-the-board reduction of 0.80 percent to all FY 2005 discretionary programs, including FY 2005 advance funds for the WIA Adults and Dislocated Worker programs appropriated in the FY 2004 appropriation. Attached are tables listing the FY 2005 rescissions for the WIA Adults (Attachment II–A) and Dislocated Worker (Attachment III–A) programs and the PY 2005 allotments for programs under WIA Title I Youth Activities (Attachment I), Adults and Dislocated Workers Employment and Training Activities (Attachments II–B and III–B, respectively) and the PY 2005 Wagner-Peyser Act preliminary allotments (Attachment V). Also attached are tables displaying the PY 2005 Reemployment Services Grants (Attachment VI), Workforce Information Grants (Attachment VII) and the FY 2005 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit allotments (Attachment VIII).

Youth Activities Allotments. PY 2005 Youth Activities funds under WIA total $986,288,064. States operating under an approved WIA state plan through June 30, 2005, will have the authority to begin to spend a portion of PY 2005 youth funds beginning on April 1, 2005, under WIA sec. 189(g)(1)(B). This authority will be provided through the WIA Annual Funding Agreement. States will be issued one-quarter (¼) of their PY 2005 allocation on April 1, 2005. Once a PY 2005 State Plan is approved, states will be issued the balance of their Youth program allocation on July 1, 2005, along with the Notice of Obligation (NOO) which provides the PY 2005 portion of the formula allocations for the Adult and Dislocated Worker programs. Attachment I includes a breakdown of the Youth Activities program allotments for PY 2005 and provides a comparison of these allotments to PY 2004 Youth Activities allotments for all states, outlying areas, Puerto Rico and the District of Columbia. Before determining the amount available for states, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities. On December 17, 2003, the President signed Public Law 108–188, the *Compact of Free Association Amendments Act of 2003*, which provides for consolidation of all funding, including WIA Title I, for the Marshall Islands and Micronesia into supplemental funding grants in the Department of Education. The Education appropriation for FY 2005 includes funding for these supplemental grants; therefore, WIA Title I funds are no longer being provided for these two areas. The Compact continues the availability of programs previously available to Palau through September 30, 2007, including WIA Title I funding provisions. The methodology for distributing funds to all outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as used since PY 2000, *i.e.*, funds are distributed among the remaining areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain of the prior year share. Data for the relative share calculation in the PY 2005 formula were from 2000 census data from all outlying areas. The total amount available for Native Americans is 1.5 percent of the total amount for Youth Activities, in accordance with WIA section 127. After determining the amount for the outlying areas and Native Americans, the amount

available for allotment to the States for PY 2005 is $969,028,023. This total amount was below the required $1 billion threshold specified in section 127(b)(1)(C)(iv)(IV); therefore, as in PY 2004, the WIA additional minimum provisions were not applied, and, instead, as required by WIA, the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor were used. Also, as required by WIA, the provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors required in WIA use the following data for the PY 2005 allotments:

(1) The number of unemployed for areas of substantial unemployment (ASUs) are averages for the 12-month period, July 2003 through preliminary June 2004;

(2) The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for the same 12-month period used for ASU unemployed data; and

(3) The number of economically disadvantaged youth (age 16 to 21, excluding college students and military) are from the 2000 Census.

Adult Employment and Training Activities Allotments. The total Adult Employment and Training Activities appropriation is $896,618,144. Attachment II–B shows the PY 2005 Adult Employment and Training Activities allotments and comparison to PY 2004 allotments by state. Like the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adults. As discussed in the Youth Activities paragraph, beginning in PY 2005, WIA funding for the Marshall Islands and Micronesia is no longer provided; instead, funding is provided in the Department of Education's appropriation. The Adult Activities funds for grants to the remaining outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for Youth Activities. After determining the amount for the outlying areas, the amount available for allotments to the states is $894,376,599. Like the Youth Activities program, the WIA minimum provisions were not applied for the PY 2005 allotments because the total amount available for the states was below the $960 million threshold required for Adults in section 132(b)(1)(B)(iv)(IV). Instead, as required by WIA, the minimum allotments were calculated using the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor. Also, like the Youth Activities program, a provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors use the same data as used for the Youth Activities formula, except that data from the 2000 Census for the number of economically disadvantaged adults (age 22 to 72, excluding college students and military) were used.

Dislocated Worker Employment and Training Activities Allotments. The total Dislocated Worker appropriation is $1,476,063,648. The total appropriation includes formula funds for the states, while the National Reserve is used for National Emergency Grants, technical assistance and training, demonstration projects (including Community-Based Job Training Grants), the outlying areas' Dislocated Worker allotments, and additional assistance to eligible states. Attachment III–B shows the PY 2005 Dislocated Worker Activities fund allotments by state. Like the Youth and Adults programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker Activities. WIA funding for the Marshall Islands and Micronesia is no longer provided, as discussed above. The Dislocated Worker Activities funds for grants to outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the remaining areas by the same pro rata share as the areas received for the PY 2005 WIA Adult Activities program, the same methodology used in PY 2004. For the state distribution of formula funds, the three formula factors required in WIA use the following data for the PY 2005 allotments:

(1) Number of unemployed, averages for the 12-month period, October 2003 through September 2004;

(2) Number of excess unemployed, averages for the 12-month period, October 2003 through September 2004; and

(3) Number of long-term unemployed, averages for calendar year 2003. Since the Dislocated Worker Activities formula has no floor amount or hold-harmless provisions, funding changes for states directly reflect the impact of changes in the number of unemployed.

Additional Funding From WIA Section 173(e) for Adult/Dislocated Worker Activities for Eligible States. WIA Section 173(e) provides that up to $15 million from Dislocated Workers reserve funds is to be made annually to certain states that receive less funds under the WIA Adult formula than they would have received had the JTPA Adult formula been in effect. The amount of the grants is based on the difference between the WIA and JTPA formula allotments; funds are available for grants for up to eight states with the largest difference. The additional funding must be used for Adult or Dislocated Worker Activities. In PY 2005, two states are eligible for these additional funds, for a total of $2,368,534 (Attachment IV).

Wagner-Peyser Act Preliminary Allotments. The Employment Service program involves a Federal-state partnership between the U.S. Department of Labor and the State Workforce Agencies. Under the Wagner-Peyser Act, funds are allotted to each state to administer a labor exchange program responding to the needs of the state's employers and workers through a system of local employment services offices that are part of the One-Stop service delivery system established by the state. Attachment V shows the Wagner-Peyser Act preliminary allotments for PY 2005. These preliminary allotments have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. They are based on averages of the civilian labor force (CLF) and unemployment for the twelve months ending September 2004. State planning estimates reflect $18 million being withheld from distribution to states to finance postage costs associated with the conduct of labor exchange services for PY 2005. The Secretary of Labor is required to set aside up to three percent of the total available funds to assure that each state will have sufficient resources to maintain statewide employment service activities, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, the three percent set-aside funds are included in the total planning estimate. The set-aside funds are distributed in two steps to states that have lost in relative share of resources from the previous year. In Step 1, states that have a CLF below one million and are also below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds are distributed on a pro-rata basis in Step 2 to all other states losing in relative share from the prior year but not meeting the size and density criteria for Step 1.

Under section 7 of the Wagner-Peyser Act, ten percent of the total sums allotted to each state shall be reserved for use by the Governor to provide performance incentives for ES offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Reemployment Services Allotments. Reemployment Services Grants are provided to the states to enhance and target integrated labor exchange services to Unemployment Insurance (UI) claimants through the One-Stop Career Center system. The total funds available for PY 2004 are $34,290,464. The allotment figures for the distribution of funds for each state for PY 2005 are listed in Attachment VI. The funds were distributed using the following administrative formula: each state received $215,000, with the remaining funds distributed using each state's share of first payments for FY 2004 to UI claimants.

Workforce Information Grants. Total PY 2005 funding for Workforce Information Grants to States is $37,696,000. The allotment figures for each state are listed in Attachment VII. Funds are distributed by administrative formula, with a reserve of $1,055,488 for postage and $187,938 for Guam and the Virgin Islands. The remaining funds are distributed to the states with 40% distributed equally to all states and 60% distributed on each state's share of CLF for the 12 months ending September 2004.

Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Programs: Grants to States. Total funding for FY 2005 is $17,856,000. Attachment VIII shows the PY 2005 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit (WOTC/WtW) grants by state. After reserving $499,968 for postage and $20,000 for the Virgin Islands, funds are distributed to states by administrative formula with a $64,000 minimum allotment and a 95% stop-loss/120% stop-gain from the prior year allotment share percentage. The allocation formula is as follows:

(1) 50% based on each state's relative share of total FY 2003 certifications issued for the WOTC/WtW Tax Credit programs;

(2) 30% based on each state's relative share of the CLF for twelve months ending September 2004; and

(3) 20% based on each state's relative share of the adult recipients of Temporary Assistance for Needy Families (TANF) for FY 2003.

Signed in Washington, DC, this 18th day of March, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

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Attachment I

U.S. Department of Labor
Employment and Training Administration

WIA Youth Activities State Allotments
Comparison of PY 2005 vs PY 2004

State	PY 2004	PY 2005	Difference	% Difference
Total	**$995,059,306**	**$986,288,064**	**($8,771,242)**	**-0.88%**
Alabama	15,180,497	14,738,266	(442,231)	-2.91%
Alaska	3,059,190	3,152,259	93,069	3.04%
Arizona	18,651,315	16,638,217	(2,013,098)	-10.79%
Arkansas	8,279,152	9,550,969	1,271,817	15.36%
California	141,024,592	135,801,478	(5,223,114)	-3.70%
Colorado	10,808,605	13,927,328	3,118,723	28.85%
Connecticut	7,565,617	8,680,992	1,115,375	14.74%
Delaware	2,452,649	2,422,570	(30,079)	-1.23%
District of Columbia	2,955,680	3,215,444	259,764	8.79%
Florida	42,102,288	37,558,049	(4,544,239)	-10.79%
Georgia	20,753,840	18,513,809	(2,240,031)	-10.79%
Hawaii	3,945,717	3,519,843	(425,874)	-10.79%
Idaho	3,759,244	3,353,496	(405,748)	-10.79%
Illinois	46,051,436	45,982,865	(68,571)	-0.15%
Indiana	16,271,301	17,672,429	1,401,128	8.61%
Iowa	4,930,250	5,990,676	1,060,426	21.51%
Kansas	7,204,640	7,304,197	99,557	1.38%
Kentucky	14,269,410	13,578,712	(690,698)	-4.84%
Louisiana	19,652,395	17,531,247	(2,121,148)	-10.79%
Maine	2,959,879	3,328,023	368,144	12.44%
Maryland	10,504,944	10,195,862	(309,082)	-2.94%
Massachusetts	16,527,910	18,460,028	1,932,118	11.69%
Michigan	36,605,909	41,637,699	5,031,790	13.75%
Minnesota	9,540,062	11,133,956	1,593,894	16.71%
Mississippi	12,349,400	11,016,488	(1,332,912)	-10.79%
Missouri	16,241,262	16,705,651	464,389	2.86%
Montana	2,880,952	2,664,856	(216,096)	-7.50%
Nebraska	2,765,459	2,836,319	70,860	2.56%
Nevada	5,146,670	4,591,173	(555,497)	-10.79%
New Hampshire	2,452,649	2,422,570	(30,079)	-1.23%
New Jersey	25,271,181	23,078,093	(2,193,088)	-8.68%
New Mexico	7,414,626	7,067,190	(347,436)	-4.69%
New York	69,091,107	71,302,645	2,211,538	3.20%
North Carolina	29,968,970	27,908,443	(2,060,527)	-6.88%
North Dakota	2,452,649	2,422,570	(30,079)	-1.23%
Ohio	38,602,812	40,189,369	1,586,557	4.11%
Oklahoma	9,267,999	10,493,069	1,225,070	13.22%
Oregon	16,672,248	17,262,892	590,644	3.54%
Pennsylvania	39,850,805	36,474,957	(3,375,848)	-8.47%
Puerto Rico	39,354,999	35,107,284	(4,247,715)	-10.79%
Rhode Island	3,146,239	3,192,769	46,530	1.48%
South Carolina	14,156,036	16,480,188	2,324,152	16.42%
South Dakota	2,452,649	2,422,570	(30,079)	-1.23%
Tennessee	16,510,312	17,924,008	1,413,696	8.56%
Texas	84,072,503	83,761,726	(310,777)	-0.37%
Utah	5,672,923	5,833,065	160,142	2.82%
Vermont	2,452,649	2,422,570	(30,079)	-1.23%
Virginia	13,081,864	12,992,888	(88,976)	-0.68%
Washington	26,080,073	25,342,091	(737,982)	-2.83%
West Virginia	7,579,333	6,761,270	(818,063)	-10.79%
Wisconsin	15,148,228	14,040,325	(1,107,903)	-7.31%
Wyoming	2,452,649	2,422,570	(30,079)	-1.23%
State Total	**977,645,768**	**969,028,023**	**(8,617,745)**	**-0.88%**
American Samoa	79,079	139,173	60,094	75.99%
Guam	772,960	1,132,830	359,870	46.56%
Marshall Islands	258,753	0	(258,753)	-100.00%
Micronesia	557,876	0	(557,876)	-100.00%
Northern Marianas	179,749	344,804	165,055	91.83%
Palau	75,000	99,602	24,602	32.80%
Virgin Islands	564,231	749,311	185,080	32.80%
Outlying Areas Total	**2,487,648**	**2,465,720**	**(21,928)**	**-0.88%**
Native Americans	**14,925,890**	**14,794,321**	**(131,569)**	**-0.88%**

Attachment II-A

U. S. Department of Labor
Employment and Training Administration

WIA Adult Activities

2005 Appropriation Rescission to PY 2004 State Allotments
(Applicable to FY 2005 Advance Funds Available 10/1/04)

	Initial Allotment			FY 2005	Revised Allotment with Rescission		
State	Total	7/1/2004 (PY 2004)	10/1/2004 (FY 2005)	0.80% Rescission	Total	7/1/2004 (PY 2004)	10/1/2004 (FY 2005)
Total	$898,890,800	$186,890,800	$712,000,000	($5,696,000)	$893,194,800	$186,890,800	$706,304,000
Alabama	14,230,682	2,958,739	11,271,943	(90,176)	14,140,506	2,958,739	11,181,767
Alaska	2,859,064	594,436	2,264,628	(18,117)	2,840,947	594,436	2,246,511
Arizona	17,371,272	3,611,708	13,759,564	(110,077)	17,261,195	3,611,708	13,649,487
Arkansas	7,660,704	1,592,758	6,067,946	(48,544)	7,612,160	1,592,758	6,019,402
California	132,993,142	27,650,963	105,342,179	(842,738)	132,150,404	27,650,963	104,499,441
Colorado	8,301,763	1,726,042	6,575,721	(52,606)	8,249,157	1,726,042	6,523,115
Connecticut	6,461,241	1,343,374	5,117,867	(40,943)	6,420,298	1,343,374	5,076,924
Delaware	2,241,609	466,059	1,775,550	(14,204)	2,227,405	466,059	1,761,346
District of Columbia	2,739,331	569,542	2,169,789	(17,358)	2,721,973	569,542	2,152,431
Florida	41,406,006	8,608,834	32,797,172	(262,378)	41,143,628	8,608,834	32,534,794
Georgia	18,949,765	3,939,896	15,009,869	(120,079)	18,829,686	3,939,896	14,889,790
Hawaii	3,755,764	780,871	2,974,893	(23,799)	3,731,965	780,871	2,951,094
Idaho	3,145,925	654,078	2,491,847	(19,935)	3,125,990	654,078	2,471,912
Illinois	41,671,909	8,664,118	33,007,791	(264,062)	41,407,847	8,664,118	32,743,729
Indiana	13,699,135	2,848,224	10,850,911	(86,807)	13,612,328	2,848,224	10,764,104
Iowa	3,546,110	737,281	2,808,829	(22,471)	3,523,639	737,281	2,786,358
Kansas	5,888,626	1,224,320	4,664,306	(37,314)	5,851,312	1,224,320	4,626,992
Kentucky	13,560,531	2,819,406	10,741,125	(85,929)	13,474,602	2,819,406	10,655,196
Louisiana	18,529,847	3,852,590	14,677,257	(117,418)	18,412,429	3,852,590	14,559,839
Maine	2,726,619	566,899	2,159,720	(17,278)	2,709,341	566,899	2,142,442
Maryland	10,028,002	2,084,949	7,943,053	(63,544)	9,964,458	2,084,949	7,879,509
Massachusetts	11,891,996	2,472,497	9,419,499	(75,356)	11,816,640	2,472,497	9,344,143
Michigan	33,688,182	7,004,200	26,683,982	(213,472)	33,474,710	7,004,200	26,470,510
Minnesota	7,736,245	1,608,463	6,127,782	(49,022)	7,687,223	1,608,463	6,078,760
Mississippi	11,101,321	2,308,105	8,793,216	(70,346)	11,030,975	2,308,105	8,722,870
Missouri	14,551,508	3,025,443	11,526,065	(92,209)	14,459,299	3,025,443	11,433,856
Montana	2,876,466	598,054	2,278,412	(18,227)	2,858,239	598,054	2,260,185
Nebraska	2,241,609	466,059	1,775,550	(14,204)	2,227,405	466,059	1,761,346
Nevada	4,999,958	1,039,555	3,960,403	(31,683)	4,968,275	1,039,555	3,928,720
New Hampshire	2,241,609	466,059	1,775,550	(14,204)	2,227,405	466,059	1,761,346
New Jersey	24,489,068	5,091,588	19,397,480	(155,180)	24,333,888	5,091,588	19,242,300
New Mexico	6,798,800	1,413,557	5,385,243	(43,082)	6,755,718	1,413,557	5,342,161
New York	66,385,630	13,802,414	52,583,216	(420,666)	65,964,964	13,802,414	52,162,550
North Carolina	27,191,090	5,653,372	21,537,718	(172,302)	27,018,788	5,653,372	21,365,416
North Dakota	2,241,609	466,059	1,775,550	(14,204)	2,227,405	466,059	1,761,346
Ohio	34,885,528	7,253,144	27,632,384	(221,059)	34,664,469	7,253,144	27,411,325
Oklahoma	8,476,875	1,762,450	6,714,425	(53,715)	8,423,160	1,762,450	6,660,710
Oregon	15,300,146	3,181,094	12,119,052	(96,952)	15,203,194	3,181,094	12,022,100
Pennylvania	35,610,304	7,403,834	28,206,470	(225,652)	35,384,652	7,403,834	27,980,818
Puerto Rico	37,679,993	7,834,148	29,845,845	(238,767)	37,441,226	7,834,148	29,607,078
Rhode Island	2,508,668	521,584	1,987,084	(15,897)	2,492,771	521,584	1,971,187
South Carolina	13,014,315	2,705,841	10,308,474	(82,468)	12,931,847	2,705,841	10,226,006
South Dakota	2,241,609	466,059	1,775,550	(14,204)	2,227,405	466,059	1,761,346
Tennessee	15,618,867	3,247,361	12,371,506	(98,972)	15,519,895	3,247,361	12,272,534
Texas	76,924,235	15,993,524	60,930,711	(487,446)	76,436,789	15,993,524	60,443,265
Utah	4,592,188	954,774	3,637,414	(29,099)	4,563,089	954,774	3,608,315
Vermont	2,241,609	466,059	1,775,550	(14,204)	2,227,405	466,059	1,761,346
Virginia	11,976,133	2,489,990	9,486,143	(75,889)	11,900,244	2,489,990	9,410,254
Washington	23,274,862	4,839,139	18,435,723	(147,486)	23,127,376	4,839,139	18,288,237
West Virginia	7,283,156	1,514,260	5,768,896	(46,151)	7,237,005	1,514,260	5,722,745
Wisconsin	12,571,338	2,613,741	9,957,597	(79,661)	12,491,677	2,613,741	9,877,936
Wyoming	2,241,609	466,059	1,775,550	(14,204)	2,227,405	466,059	1,761,346
State Total	896,643,573	186,423,573	710,220,000	(5,681,760)	890,961,813	186,423,573	704,538,240
American Samoa	88,594	18,420	70,174	(561)	88,033	18,420	69,613
Guam	459,478	95,531	363,947	(2,912)	456,566	95,531	361,035
Marshall Islands	271,804	56,511	215,293	(1,722)	270,082	56,511	213,571
Micronesia	511,641	106,377	405,264	(3,242)	508,399	106,377	402,022
Northern Marianas	264,613	55,016	209,597	(1,677)	262,936	55,016	207,920
Palau	75,000	15,593	59,407	(475)	74,525	15,593	58,932
Virgin Islands	576,097	119,779	456,318	(3,651)	572,446	119,779	452,667
Outlying Areas Total	2,247,227	467,227	1,780,000	(14,240)	2,232,987	467,227	1,765,760

Attachment II-B

U.S. Department of Labor
Employment and Training Administration
WIA Adult Activities State Allotments
Comparison of PY 2005 vs PY 2004

State	PY 2004 (Pre - FY 2005 0.80% Rescission)	PY 2005	Difference	% Difference
Total	**$898,890,800**	**$896,618,144**	**($2,272,656)**	**-0.25%**
Alabama	14,230,682	14,088,358	(142,324)	-1.00%
Alaska	2,859,064	2,951,668	92,604	3.24%
Arizona	17,371,272	15,594,617	(1,776,655)	-10.23%
Arkansas	7,660,704	8,822,509	1,161,805	15.17%
California	132,993,142	128,964,901	(4,028,241)	-3.03%
Colorado	8,301,763	10,765,006	2,463,243	29.67%
Connecticut	6,461,241	7,539,555	1,078,314	16.69%
Delaware	2,241,609	2,235,941	(5,668)	-0.25%
District of Columbia	2,739,331	2,698,080	(41,251)	-1.51%
Florida	41,406,006	37,171,188	(4,234,818)	-10.23%
Georgia	18,949,765	17,011,669	(1,938,096)	-10.23%
Hawaii	3,755,764	3,371,642	(384,122)	-10.23%
Idaho	3,145,925	2,824,174	(321,751)	-10.23%
Illinois	41,671,909	41,778,880	106,971	0.26%
Indiana	13,699,135	15,082,094	1,382,959	10.10%
Iowa	3,546,110	4,292,563	746,453	21.05%
Kansas	5,888,626	6,014,471	125,845	2.14%
Kentucky	13,560,531	14,100,076	539,545	3.98%
Louisiana	18,529,847	16,634,698	(1,895,149)	-10.23%
Maine	2,726,619	3,094,355	367,736	13.49%
Maryland	10,028,002	9,526,346	(501,656)	-5.00%
Massachusetts	11,891,996	15,420,508	3,528,512	29.67%
Michigan	33,688,182	37,954,938	4,266,756	12.67%
Minnesota	7,736,245	9,300,981	1,564,736	20.23%
Mississippi	11,101,321	9,965,928	(1,135,393)	-10.23%
Missouri	14,551,508	15,085,479	533,971	3.67%
Montana	2,876,466	2,582,274	(294,192)	-10.23%
Nebraska	2,241,609	2,235,941	(5,668)	-0.25%
Nevada	4,999,958	4,488,585	(511,373)	-10.23%
New Hampshire	2,241,609	2,235,941	(5,668)	-0.25%
New Jersey	24,489,068	22,589,247	(1,899,821)	-7.76%
New Mexico	6,798,800	6,643,971	(154,829)	-2.28%
New York	66,385,630	68,925,986	2,540,356	3.83%
North Carolina	27,191,090	25,432,702	(1,758,388)	-6.47%
North Dakota	2,241,609	2,235,941	(5,668)	-0.25%
Ohio	34,885,528	36,505,610	1,620,082	4.64%
Oklahoma	8,476,875	9,696,917	1,220,042	14.39%
Oregon	15,300,146	15,878,573	578,427	3.78%
Pennsylvania	35,610,304	32,733,798	(2,876,506)	-8.08%
Puerto Rico	37,679,993	33,826,254	(3,853,739)	-10.23%
Rhode Island	2,508,668	2,573,429	64,761	2.58%
South Carolina	13,014,315	15,233,141	2,218,826	17.05%
South Dakota	2,241,609	2,235,941	(5,668)	-0.25%
Tennessee	15,618,867	17,165,906	1,547,039	9.90%
Texas	76,924,235	77,097,549	173,314	0.23%
Utah	4,592,188	4,496,453	(95,735)	-2.08%
Vermont	2,241,609	2,235,941	(5,668)	-0.25%
Virginia	11,976,133	11,634,102	(342,031)	-2.86%
Washington	23,274,862	22,992,788	(282,074)	-1.21%
West Virginia	7,283,156	6,538,268	(744,888)	-10.23%
Wisconsin	12,571,338	11,634,775	(936,563)	-7.45%
Wyoming	2,241,609	2,235,941	(5,668)	-0.25%
State Total	**896,643,573**	**894,376,599**	**(2,266,974)**	**-0.25%**
American Samoa	88,594	122,101	33,507	37.82%
Guam	459,478	857,409	397,931	86.61%
Marshall Islands	271,804	0	(271,804)	-100.00%
Micronesia	511,641	0	(511,641)	-100.00%
Northern Marianas	264,613	364,691	100,078	37.82%
Palau	75,000	103,365	28,365	37.82%
Virgin Islands	576,097	793,979	217,882	37.82%
Outlying Areas Total	**2,247,227**	**2,241,545**	**(5,682)**	**-0.25%**

Attachment III-A

U. S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities
2005 Appropriation Rescission to PY 2004 State Allotments
(Applicable to FY 2005 Advance Funds Available 10/1/04)

State	Initial Allotment			FY 2005	Revised Allotment with Rescission		
	Total	7/1/2004 (PY 2004)	10/1/2004 (FY 2005)	0.80% Rescission	Total	7/1/2004 (PY 2004)	10/1/2004 (FY 2005)
Total	**$1,454,419,116**	**$394,419,116**	**$1,060,000,000**	**($8,480,000)**	**$1,445,939,116**	**$394,419,116**	**$1,051,520,000**
Alabama	15,915,250	4,460,302	11,454,948	(91,640)	15,823,610	4,460,302	11,363,308
Alaska	4,052,945	1,135,851	2,917,094	(23,337)	4,029,608	1,135,851	2,893,757
Arizona	19,795,977	5,547,888	14,248,089	(113,985)	19,681,992	5,547,888	14,134,104
Arkansas	7,971,448	2,234,025	5,737,423	(45,899)	7,925,549	2,234,025	5,691,524
California	182,472,003	51,138,384	131,333,619	(1,050,669)	181,421,334	51,138,384	130,282,950
Colorado	17,386,544	4,872,637	12,513,907	(100,111)	17,286,433	4,872,637	12,413,796
Connecticut	9,017,462	2,527,174	6,490,288	(51,922)	8,965,540	2,527,174	6,438,366
Delaware	1,443,317	404,494	1,038,823	(8,311)	1,435,006	404,494	1,030,512
District of Columbia	3,293,130	922,911	2,370,219	(18,962)	3,274,168	922,911	2,351,257
Florida	53,987,825	15,130,267	38,857,558	(310,860)	53,676,965	15,130,267	38,546,698
Georgia	23,938,297	6,708,787	17,229,510	(137,836)	23,800,461	6,708,787	17,091,674
Hawaii	2,241,272	628,124	1,613,148	(12,905)	2,228,367	628,124	1,600,243
Idaho	4,534,083	1,270,692	3,263,391	(26,107)	4,507,976	1,270,692	3,237,284
Illinois	65,073,898	18,237,176	46,836,722	(374,694)	64,699,204	18,237,176	46,462,028
Indiana	17,558,760	4,920,901	12,637,859	(101,103)	17,457,657	4,920,901	12,536,756
Iowa	5,676,652	1,590,901	4,085,751	(32,686)	5,643,966	1,590,901	4,053,065
Kansas	7,243,275	2,029,952	5,213,323	(41,707)	7,201,568	2,029,952	5,171,616
Kentucky	14,434,214	4,045,236	10,388,978	(83,112)	14,351,102	4,045,236	10,305,866
Louisiana	18,036,776	5,054,866	12,981,910	(103,855)	17,932,921	5,054,866	12,878,055
Maine	2,746,735	769,782	1,976,953	(15,816)	2,730,919	769,782	1,961,137
Maryland	11,824,549	3,313,869	8,510,680	(68,085)	11,756,464	3,313,869	8,442,595
Massachusetts	25,342,096	7,102,206	18,239,890	(145,919)	25,196,177	7,102,206	18,093,971
Michigan	50,409,392	14,127,399	36,281,993	(290,256)	50,119,136	14,127,399	35,991,737
Minnesota	11,249,351	3,152,668	8,096,683	(64,773)	11,184,578	3,152,668	8,031,910
Mississippi	13,723,973	3,846,189	9,877,784	(79,022)	13,644,951	3,846,189	9,798,762
Missouri	19,360,228	5,425,768	13,934,460	(111,476)	19,248,752	5,425,768	13,822,984
Montana	1,621,508	454,433	1,167,075	(9,337)	1,612,171	454,433	1,157,738
Nebraska	2,851,401	799,115	2,052,286	(16,418)	2,834,983	799,115	2,035,868
Nevada	6,980,038	1,956,179	5,023,859	(40,191)	6,939,847	1,956,179	4,983,668
New Hampshire	2,880,523	807,276	2,073,247	(16,586)	2,863,937	807,276	2,056,661
New Jersey	36,042,634	10,101,068	25,941,566	(207,532)	35,835,102	10,101,068	25,734,034
New Mexico	6,006,672	1,683,390	4,323,282	(34,586)	5,972,086	1,683,390	4,288,696
New York	88,811,867	24,889,820	63,922,047	(511,376)	88,300,491	24,889,820	63,410,671
North Carolina	40,837,556	11,444,861	29,392,695	(235,142)	40,602,414	11,444,861	29,157,553
North Dakota	1,115,928	312,743	803,185	(6,425)	1,109,503	312,743	796,760
Ohio	45,565,287	12,769,823	32,795,464	(262,364)	45,302,923	12,769,823	32,533,100
Oklahoma	8,980,008	2,516,677	6,463,331	(51,707)	8,928,301	2,516,677	6,411,624
Oregon	23,836,272	6,680,194	17,156,078	(137,249)	23,699,023	6,680,194	17,018,829
Pennylvania	48,164,633	13,498,298	34,666,335	(277,331)	47,887,302	13,498,298	34,389,004
Puerto Rico	30,525,711	8,554,932	21,970,779	(175,766)	30,349,945	8,554,932	21,795,013
Rhode Island	3,448,814	966,542	2,482,272	(19,858)	3,428,956	966,542	2,462,414
South Carolina	18,063,750	5,062,426	13,001,324	(104,011)	17,959,739	5,062,426	12,897,313
South Dakota	996,339	279,227	717,112	(5,737)	990,602	279,227	711,375
Tennessee	15,710,419	4,402,897	11,307,522	(90,460)	15,619,959	4,402,897	11,217,062
Texas	100,044,294	28,037,745	72,006,549	(576,052)	99,468,242	28,037,745	71,430,497
Utah	7,726,406	2,165,351	5,561,055	(44,488)	7,681,918	2,165,351	5,516,567
Vermont	1,036,599	290,510	746,089	(5,969)	1,030,630	290,510	740,120
Virginia	13,135,448	3,681,253	9,454,195	(75,634)	13,059,814	3,681,253	9,378,561
Washington	37,037,061	10,379,759	26,657,302	(213,258)	36,823,803	10,379,759	26,444,044
West Virginia	6,853,650	1,920,758	4,932,892	(39,463)	6,814,187	1,920,758	4,893,429
Wisconsin	20,279,450	5,683,383	14,596,067	(116,769)	20,162,681	5,683,383	14,479,298
Wyoming	910,583	255,194	655,389	(5,243)	905,340	255,194	650,146
State Total	**1,178,192,303**	**330,192,303**	**848,000,000**	**(6,784,000)**	**1,171,408,303**	**330,192,303**	**841,216,000**
American Samoa	143,346	33,330	110,016	(880)	142,466	33,330	109,136
Guam	743,443	172,862	570,581	(4,565)	738,878	172,862	566,016
Marshall Islands	439,783	102,256	337,527	(2,700)	437,083	102,256	334,827
Micronesia	827,843	192,486	635,357	(5,083)	822,760	192,486	630,274
Northern Marianas	428,148	99,551	328,597	(2,629)	425,519	99,551	325,968
Palau	121,351	28,216	93,135	(745)	120,606	28,216	92,390
Virgin Islands	932,134	216,734	715,400	(5,723)	926,411	216,734	709,677
Outlying Areas Total	**3,636,048**	**845,435**	**2,790,613**	**(22,325)**	**3,613,723**	**845,435**	**2,768,288**
National Reserve	**272,590,765**	**63,381,378**	**209,209,387**	**(1,673,675)**	**270,917,090**	**63,381,378**	**207,535,712**

Attachment III-B

U.S. Department of Labor
Employment and Training Administration

WIA Dislocated Worker Activities State Allotments
Comparison of PY 2005 vs PY 2004

State	PY 2004 (Pre - 0.80% Rescission)	PY 2005	Difference	% Difference
Total	**$1,454,419,116**	**$1,476,063,648**	**$21,644,532**	**1.49%**
Alabama	15,915,250	18,300,995	2,385,745	14.99%
Alaska	4,052,945	4,502,548	449,603	11.09%
Arizona	19,795,977	15,130,307	(4,665,670)	-23.57%
Arkansas	7,971,448	10,597,841	2,626,393	32.95%
California	182,472,003	182,835,332	363,329	0.20%
Colorado	17,386,544	17,818,464	431,920	2.48%
Connecticut	9,017,462	11,067,112	2,049,650	22.73%
Delaware	1,443,317	1,615,691	172,374	11.94%
District of Columbia	3,293,130	4,117,569	824,439	25.04%
Florida	53,987,825	40,851,017	(13,136,808)	-24.33%
Georgia	23,938,297	20,072,811	(3,865,486)	-16.15%
Hawaii	2,241,272	2,158,542	(82,730)	-3.69%
Idaho	4,534,083	3,398,915	(1,135,168)	-25.04%
Illinois	65,073,898	66,920,949	1,847,051	2.84%
Indiana	17,558,760	20,716,584	3,157,824	17.98%
Iowa	5,676,652	5,851,685	175,033	3.08%
Kansas	7,243,275	7,651,181	407,906	5.63%
Kentucky	14,434,214	15,174,784	740,570	5.13%
Louisiana	18,036,776	18,229,091	192,315	1.07%
Maine	2,746,735	3,233,868	487,133	17.73%
Maryland	11,824,549	11,411,244	(413,305)	-3.50%
Massachusetts	25,342,096	25,629,346	287,250	1.13%
Michigan	50,409,392	62,582,469	12,173,077	24.15%
Minnesota	11,249,351	13,235,164	1,985,813	17.65%
Mississippi	13,723,973	11,210,085	(2,513,888)	-18.32%
Missouri	19,360,228	19,937,612	577,384	2.98%
Montana	1,621,508	1,920,594	299,086	18.44%
Nebraska	2,851,401	3,283,747	432,346	15.16%
Nevada	6,980,038	4,725,377	(2,254,661)	-32.30%
New Hampshire	2,880,523	2,801,408	(79,115)	-2.75%
New Jersey	36,042,634	31,288,708	(4,753,926)	-13.19%
New Mexico	6,006,672	7,395,867	1,389,195	23.13%
New York	88,811,867	95,415,077	6,603,210	7.44%
North Carolina	40,837,556	35,655,022	(5,182,534)	-12.69%
North Dakota	1,115,928	1,012,281	(103,647)	-9.29%
Ohio	45,565,287	53,062,694	7,497,407	16.45%
Oklahoma	8,980,008	9,667,175	687,167	7.65%
Oregon	23,836,272	25,222,100	1,385,828	5.81%
Pennsylvania	48,164,633	44,740,544	(3,424,089)	-7.11%
Puerto Rico	30,525,711	31,498,277	972,566	3.19%
Rhode Island	3,448,814	3,954,620	505,806	14.67%
South Carolina	18,063,750	23,006,992	4,943,242	27.37%
South Dakota	996,339	1,158,688	162,349	16.29%
Tennessee	15,710,419	18,722,605	3,012,186	19.17%
Texas	100,044,294	102,134,470	2,090,176	2.09%
Utah	7,726,406	5,903,570	(1,822,836)	-23.59%
Vermont	1,036,599	1,229,990	193,391	18.66%
Virginia	13,135,448	13,034,020	(101,428)	-0.77%
Washington	37,037,061	35,786,962	(1,250,099)	-3.38%
West Virginia	6,853,650	6,216,292	(637,358)	-9.30%
Wisconsin	20,279,450	19,310,036	(969,414)	-4.78%
Wyoming	910,583	865,294	(45,289)	-4.97%
State Total	**1,178,192,303**	**1,193,263,616**	**15,071,313**	**1.28%**
American Samoa	143,346	201,009	57,663	40.23%
Guam	743,443	1,411,516	668,073	89.86%
Marshall Islands	439,783	0	(439,783)	-100.00%
Micronesia	827,843	0	(827,843)	-100.00%
Northern Marianas	428,148	600,375	172,227	40.23%
Palau	121,351	170,165	48,814	40.23%
Virgin Islands	932,134	1,307,094	374,960	40.23%
Outlying Areas Total	**3,636,048**	**3,690,159**	**54,111**	**1.49%**
National Reserve	**272,590,765**	**279,109,873**	**6,519,108**	**2.39%**

Attachment IV

U.S. Department of Labor
Employment and Training Administration

Additional PY 2005 Funding from WIA Section 173(e) for Adult/Dislocated Worker Activities for Eligible States

** Per WIA Sec. 173(e): Up to $15 million from Dislocated Workers Emergency reserve is to be made available to not more than 8 States with the largest ratio of JTPA formula amount to WIA formula amount.*

State	WIA Calculation	JTPA Calculation	JTPA less WIA	JTPA less Quotient	Eligible * States	Additional $*
Total	$894,376,599	$894,241,298	($135,301)		2	$2,368,534
Alabama	14,088,358	14,041,937	(46,421)	99.6705%		
Alaska	2,951,668	2,940,442	(11,226)	99.6197%		
Arizona	15,594,617	15,592,258	(2,359)	99.9849%		
Arkansas	8,822,509	8,792,684	(29,825)	99.6619%		
California	128,964,901	128,510,626	(454,275)	99.6478%		
Colorado	10,765,006	12,379,313	1,614,307	114.9959%	1	1,614,307
Connecticut	7,539,555	7,512,968	(26,587)	99.6474%		
Delaware	2,235,941	2,235,603	(338)	99.9849%		
District of Columbia	2,698,080	2,688,941	(9,139)	99.6613%		
Florida	37,171,188	37,165,564	(5,624)	99.9849%		
Georgia	17,011,669	17,009,096	(2,573)	99.9849%		
Hawaii	3,371,642	3,371,131	(511)	99.9848%		
Idaho	2,824,174	2,823,747	(427)	99.9849%		
Illinois	41,778,880	41,622,154	(156,726)	99.6249%		
Indiana	15,082,094	15,027,881	(54,213)	99.6405%		
Iowa	4,292,563	4,279,546	(13,017)	99.6968%		
Kansas	6,014,471	5,993,458	(21,013)	99.6506%		
Kentucky	14,100,076	14,057,903	(42,173)	99.7009%		
Louisiana	16,634,698	16,632,182	(2,516)	99.9849%		
Maine	3,094,355	3,084,282	(10,073)	99.6745%		
Maryland	9,526,346	9,496,437	(29,909)	99.6860%		
Massachusetts	15,420,508	16,174,735	754,227	104.8911%	1	754,227
Michigan	37,954,938	37,809,182	(145,756)	99.6160%		
Minnesota	9,300,981	9,271,234	(29,747)	99.6802%		
Mississippi	9,965,928	9,964,421	(1,507)	99.9849%		
Missouri	15,085,479	15,033,097	(52,382)	99.6528%		
Montana	2,582,274	2,581,883	(391)	99.9849%		
Nebraska	2,235,941	2,235,603	(338)	99.9849%		
Nevada	4,488,585	4,487,906	(679)	99.9849%		
New Hampshire	2,235,941	2,235,603	(338)	99.9849%		
New Jersey	22,589,247	22,508,170	(81,077)	99.6411%		
New Mexico	6,643,971	6,622,503	(21,468)	99.6769%		
New York	68,925,986	68,690,324	(235,662)	99.6581%		
North Carolina	25,432,702	25,341,073	(91,629)	99.6397%		
North Dakota	2,235,941	2,235,603	(338)	99.9849%		
Ohio	36,505,610	36,369,544	(136,066)	99.6273%		
Oklahoma	9,696,917	9,665,492	(31,425)	99.6759%		
Oregon	15,878,573	15,817,740	(60,833)	99.6169%		
Pennylvania	32,733,798	32,620,885	(112,913)	99.6551%		
Puerto Rico	33,826,254	33,821,137	(5,117)	99.9849%		
Rhode Island	2,573,429	2,564,734	(8,695)	99.6621%		
South Carolina	15,233,141	15,178,075	(55,066)	99.6385%		
South Dakota	2,235,941	2,235,603	(338)	99.9849%		
Tennessee	17,165,906	17,107,384	(58,522)	99.6591%		
Texas	77,097,549	76,822,945	(274,604)	99.6438%		
Utah	4,496,453	4,481,207	(15,246)	99.6609%		
Vermont	2,235,941	2,235,603	(338)	99.9849%		
Virginia	11,634,102	11,599,005	(35,097)	99.6983%		
Washington	22,992,788	22,905,219	(87,569)	99.6191%		
West Virginia	6,538,268	6,537,279	(989)	99.9849%		
Wisconsin	11,634,775	11,594,353	(40,422)	99.6526%		
Wyoming	2,235,941	2,235,603	(338)	99.9849%		

Attachment V

U. S. Department of Labor
Employment and Training Administration

Employment Service (Wagner-Peyser)
PY 2005 Preliminary vs PY 2004 Final Allotments

	Final PY 2004	Prel PY 2005	Difference	% % Difference
Total	**$752,319,968**	**$746,301,440**	**($6,018,528)**	**-0.80%**
Alabama	10,393,066	10,291,582	(101,484)	-0.98%
Alaska	7,982,408	7,916,984	(65,424)	-0.82%
Arizona	12,562,304	12,437,397	(124,907)	-0.99%
Arkansas	6,049,046	5,999,062	(49,984)	-0.83%
California	86,120,277	85,330,345	(789,932)	-0.92%
Colorado	11,446,619	11,346,734	(99,885)	-0.87%
Connecticut	8,081,689	8,006,355	(75,334)	-0.93%
Delaware	2,051,084	2,034,273	(16,811)	-0.82%
District of Columbia	3,047,445	3,003,706	(43,739)	-1.44%
Florida	36,603,194	36,285,061	(318,133)	-0.87%
Georgia	19,104,848	18,919,518	(185,330)	-0.97%
Hawaii	2,917,251	2,875,776	(41,475)	-1.42%
Idaho	6,650,767	6,596,257	(54,510)	-0.82%
Illinois	31,142,250	30,855,379	(286,871)	-0.92%
Indiana	14,245,240	14,126,353	(118,887)	-0.83%
Iowa	6,913,737	6,856,295	(57,442)	-0.83%
Kansas	6,435,283	6,381,955	(53,328)	-0.83%
Kentucky	9,524,881	9,423,146	(101,735)	-1.07%
Louisiana	10,347,040	10,223,249	(123,791)	-1.20%
Maine	3,955,148	3,922,731	(32,417)	-0.82%
Maryland	12,932,357	12,798,998	(133,359)	-1.03%
Massachusetts	15,671,959	15,531,416	(140,543)	-0.90%
Michigan	24,993,149	24,843,396	(149,753)	-0.60%
Minnesota	12,713,063	12,709,038	(4,025)	-0.03%
Mississippi	6,719,219	6,631,569	(87,650)	-1.30%
Missouri	13,884,974	13,759,480	(125,494)	-0.90%
Montana	5,435,041	5,390,495	(44,546)	-0.82%
Nebraska	6,531,851	6,478,316	(53,535)	-0.82%
Nevada	5,162,089	5,112,872	(49,217)	-0.95%
New Hampshire	3,055,738	3,029,170	(26,568)	-0.87%
New Jersey	20,228,282	20,040,447	(187,835)	-0.93%
New Mexico	6,099,071	6,049,083	(49,988)	-0.82%
New York	44,729,961	44,337,365	(392,596)	-0.88%
North Carolina	20,295,652	20,084,196	(211,456)	-1.04%
North Dakota	5,534,498	5,489,137	(45,361)	-0.82%
Ohio	27,478,392	27,457,702	(20,690)	-0.08%
Oklahoma	7,672,154	7,601,041	(71,113)	-0.93%
Oregon	9,596,897	9,509,382	(87,515)	-0.91%
Pennsylvania	29,038,471	28,757,855	(280,616)	-0.97%
Puerto Rico	9,348,366	9,229,661	(118,705)	-1.27%
Rhode Island	2,533,912	2,565,691	31,779	1.25%
South Carolina	9,638,907	9,881,322	242,415	2.51%
South Dakota	5,115,148	5,073,224	(41,924)	-0.82%
Tennessee	13,284,936	13,167,365	(117,571)	-0.88%
Texas	52,387,223	51,931,544	(455,679)	-0.87%
Utah	9,178,145	9,046,415	(131,730)	-1.44%
Vermont	2,396,228	2,376,588	(19,640)	-0.82%
Virginia	15,761,242	15,618,664	(142,578)	-0.90%
Washington	15,792,772	15,644,328	(148,444)	-0.94%
West Virginia	5,854,792	5,806,806	(47,986)	-0.82%
Wisconsin	13,923,305	13,805,317	(117,988)	-0.85%
Wyoming	3,968,580	3,936,053	(32,527)	-0.82%
State Total	**732,529,951**	**726,526,094**	**(6,003,857)**	**-0.82%**
Guam	343,605	340,789	(2,816)	-0.82%
Virgin Islands	1,446,412	1,434,557	(11,855)	-0.82%
Postage	**18,000,000**	**18,000,000**	**0**	**0.00%**

Attachment VI

U. S. Department of Labor
Employment and Training Administration
Reemployment Services
PY 2005 vs PY 2004 Allotments

	PY 2004	PY 2005	Difference	% Diff
Total	**$34,566,846**	**$34,290,464**	**($276,382)**	**-0.80%**
Alabama	541,555	527,432	(14,123)	-2.61%
Alaska	327,778	340,644	12,866	3.93%
Arizona	489,941	481,845	(8,096)	-1.65%
Arkansas	463,091	446,659	(16,432)	-3.55%
California	3,426,275	3,293,551	(132,724)	-3.87%
Colorado	482,490	464,292	(18,198)	-3.77%
Connecticut	577,098	568,631	(8,467)	-1.47%
Delaware	292,968	291,459	(1,509)	-0.52%
District of Columbia	265,430	264,302	(1,128)	-0.42%
Florida	983,324	996,470	13,146	1.34%
Georgia	833,546	780,999	(52,547)	-6.30%
Hawaii	286,462	284,093	(2,369)	-0.83%
Idaho	355,368	355,891	523	0.15%
Illinois	1,256,279	1,288,305	32,026	2.55%
Indiana	701,962	712,350	10,388	1.48%
Iowa	467,344	465,757	(1,587)	-0.34%
Kansas	422,539	406,720	(15,819)	-3.74%
Kentucky	537,557	545,415	7,858	1.46%
Louisiana	444,676	461,553	16,877	3.80%
Maine	290,481	299,081	8,600	2.96%
Maryland	516,208	516,514	306	0.06%
Massachusetts	894,453	844,407	(50,046)	-5.60%
Michigan	1,321,707	1,447,599	125,892	9.52%
Minnesota	604,640	616,205	11,565	1.91%
Mississippi	389,432	382,486	(6,946)	-1.78%
Missouri	643,240	664,572	21,332	3.32%
Montana	278,896	279,789	893	0.32%
Nebraska	320,695	329,585	8,890	2.77%
Nevada	404,041	397,675	(6,366)	-1.58%
New Hampshire	269,663	266,825	(2,838)	-1.05%
New Jersey	1,049,760	1,113,732	63,972	6.09%
New Mexico	299,946	305,139	5,193	1.73%
New York	1,631,923	1,596,814	(35,109)	-2.15%
North Carolina	1,056,089	971,533	(84,556)	-8.01%
North Dakota	252,589	251,061	(1,528)	-0.60%
Ohio	1,031,240	1,046,282	15,042	1.46%
Oklahoma	396,027	381,081	(14,946)	-3.77%
Oregon	656,245	626,031	(30,214)	-4.60%
Pennsylvania	1,526,880	1,543,329	16,449	1.08%
Puerto Rico	460,276	473,032	12,756	2.77%
Rhode Island	314,112	323,378	9,266	2.95%
South Carolina	562,104	548,261	(13,843)	-2.46%
South Dakota	242,918	243,773	855	0.35%
Tennessee	688,395	666,664	(21,731)	-3.16%
Texas	1,457,022	1,411,074	(45,948)	-3.15%
Utah	353,840	344,741	(9,099)	-2.57%
Vermont	281,484	277,870	(3,614)	-1.28%
Virgin Islands	221,039	218,389	(2,650)	-1.20%
Virginia	614,168	568,182	(45,986)	-7.49%
Washington	841,743	810,873	(30,870)	-3.67%
West Virginia	341,731	339,116	(2,615)	-0.77%
Wisconsin	941,759	955,495	13,736	1.46%
Wyoming	256,417	253,508	(2,909)	-1.13%

Attachment VII

U. S. Department of Labor
Employment and Training Administration

Workforce Information Grants to States
PY 2005 vs PY 2004 Allotments

State	PY 2004	PY 2005 Workforce Information Core Products & Services 1 and 2	PY 2005 Information Core Products & Services 3 through 6	PY 2005 Total	PY 2005 vs PY 2004 Difference $	PY 2005 vs PY 2004 Difference % Diff
Total	**$38,000,000**	**$12,598,400**	**$25,097,600**	**$37,696,000**	**($304,000)**	**-0.80%**
Alabama	603,500	200,169	398,761	598,930	(4,570)	-0.76%
Alaska	332,227	110,541	220,211	330,752	(1,475)	-0.44%
Arizona	684,625	228,630	455,461	684,091	(534)	-0.08%
Arkansas	471,602	157,784	314,326	472,110	508	0.11%
California	2,891,347	959,342	1,911,133	2,870,475	(20,872)	-0.72%
Colorado	652,888	217,009	432,309	649,318	(3,570)	-0.55%
Connecticut	552,072	181,953	362,474	544,427	(7,645)	-1.38%
Delaware	345,013	114,554	228,206	342,760	(2,253)	-0.65%
District of Columbia	327,836	108,561	216,267	324,828	(3,008)	-0.92%
Florida	1,502,479	502,901	1,001,843	1,504,744	2,265	0.15%
Georgia	942,164	311,289	620,127	931,416	(10,748)	-1.14%
Hawaii	375,053	124,627	248,272	372,899	(2,154)	-0.57%
Idaho	386,143	128,221	255,433	383,654	(2,489)	-0.64%
Illinois	1,228,437	407,410	811,614	1,219,024	(9,413)	-0.77%
Indiana	758,947	250,185	498,400	748,585	(10,362)	-1.37%
Iowa	523,568	173,437	345,509	518,946	(4,622)	-0.88%
Kansas	496,935	165,504	329,705	495,209	(1,726)	-0.35%
Kentucky	574,973	191,096	380,687	571,783	(3,190)	-0.55%
Louisiana	587,025	194,070	386,611	580,681	(6,344)	-1.08%
Maine	386,224	128,071	255,134	383,205	(3,019)	-0.78%
Maryland	716,575	238,269	474,662	712,931	(3,644)	-0.51%
Massachusetts	792,980	261,236	520,415	781,651	(11,329)	-1.43%
Michigan	1,036,004	342,675	682,652	1,025,327	(10,677)	-1.03%
Minnesota	719,406	238,743	475,607	714,350	(5,056)	-0.70%
Mississippi	478,715	158,503	315,758	474,261	(4,454)	-0.93%
Missouri	733,974	242,624	483,337	725,961	(8,013)	-1.09%
Montana	353,628	117,341	233,757	351,098	(2,530)	-0.72%
Nebraska	428,500	142,220	283,320	425,540	(2,960)	-0.69%
Nevada	453,200	151,446	301,700	453,146	(54)	-0.01%
New Hampshire	390,080	129,505	257,989	387,494	(2,586)	-0.66%
New Jersey	936,338	310,405	618,367	928,772	(7,566)	-0.81%
New Mexico	416,672	138,207	275,325	413,532	(3,140)	-0.75%
New York	1,674,460	551,654	1,098,965	1,650,619	(23,841)	-1.42%
North Carolina	914,636	300,872	599,375	900,247	(14,389)	-1.57%
North Dakota	334,438	110,861	220,849	331,710	(2,728)	-0.82%
Ohio	1,166,450	383,160	763,303	1,146,463	(19,987)	-1.71%
Oklahoma	536,078	177,371	353,345	530,716	(5,362)	-1.00%
Oregon	560,404	185,290	369,121	554,411	(5,993)	-1.07%
Pennsylvania	1,204,525	399,787	796,427	1,196,214	(8,311)	-0.69%
Puerto Rico	490,727	162,653	324,025	486,678	(4,049)	-0.83%
Rhode Island	368,277	121,748	242,536	364,284	(3,993)	-1.08%
South Carolina	581,866	194,438	387,345	581,783	(83)	-0.01%
South Dakota	346,152	114,610	228,317	342,927	(3,225)	-0.93%
Tennessee	717,368	237,689	473,506	711,195	(6,173)	-0.86%
Texas	1,912,771	632,930	1,260,877	1,893,807	(18,964)	-0.99%
Utah	459,629	152,848	304,492	457,340	(2,289)	-0.50%
Vermont	335,067	111,071	221,268	332,339	(2,728)	-0.81%
Virginia	846,430	282,013	561,807	843,820	(2,610)	-0.31%
Washington	751,796	250,500	499,027	749,527	(2,269)	-0.30%
West Virginia	400,299	132,790	264,534	397,324	(2,975)	-0.74%
Wisconsin	742,589	246,557	491,173	737,730	(4,859)	-0.65%
Wyoming	324,262	107,462	214,078	321,540	(2,722)	-0.84%
State Total	**36,747,354**	**12,182,832**	**24,269,742**	**36,452,574**	**(294,780)**	**-0.80%**
Guam	99,516	33,128	65,992	99,120	(396)	-0.40%
Virgin Islands	89,130	29,685	59,133	88,818	(312)	-0.35%
Postage	1,064,000	352,755	702,733	1,055,488	(8,512)	-0.80%

Attachment VIII

U. S. Department of Labor
Employment and Training Administration

Work Opportunity and Welfare-to-Work Tax Credits
FY 2005 vs FY 2004 State Allotments

State	FY 2004	FY 2005	Difference	% Difference
Total	**$20,740,902**	**$17,856,000**	**($2,884,902)**	**-13.9%**
Alabama	303,618	248,278	(55,340)	-18.2%
Alaska	64,000	64,000	0	0.0%
Arizona	309,973	296,769	(13,204)	-4.3%
Arkansas	331,306	270,919	(60,387)	-18.2%
California	2,340,303	2,039,179	(301,124)	-12.9%
Colorado	182,124	168,123	(14,001)	-7.7%
Connecticut	275,212	225,049	(50,163)	-18.2%
Delaware	64,000	64,000	0	0.0%
District of Columbia	72,914	64,000	(8,914)	-12.2%
Florida	772,632	693,102	(79,530)	-10.3%
Georgia	533,248	450,638	(82,610)	-15.5%
Hawaii	72,914	64,000	(8,914)	-12.2%
Idaho	64,000	64,000	0	0.0%
Illinois	970,696	793,768	(176,928)	-18.2%
Indiana	510,793	444,859	(65,934)	-12.9%
Iowa	267,378	223,928	(43,450)	-16.3%
Kansas	159,639	148,695	(10,944)	-6.9%
Kentucky	326,693	292,311	(34,382)	-10.5%
Louisiana	464,475	379,816	(84,659)	-18.2%
Maine	84,500	69,098	(15,402)	-18.2%
Maryland	449,895	367,893	(82,002)	-18.2%
Massachusetts	404,986	331,170	(73,816)	-18.2%
Michigan	661,530	542,072	(119,458)	-18.1%
Minnesota	376,658	308,005	(68,653)	-18.2%
Mississippi	199,101	178,302	(20,799)	-10.4%
Missouri	451,556	392,001	(59,555)	-13.2%
Montana	64,000	64,000	0	0.0%
Nebraska	125,212	114,244	(10,968)	-8.8%
Nevada	125,336	102,491	(22,845)	-18.2%
New Hampshire	72,914	64,000	(8,914)	-12.2%
New Jersey	620,295	554,311	(65,984)	-10.6%
New Mexico	188,132	153,841	(34,291)	-18.2%
New York	1,175,407	961,167	(214,240)	-18.2%
North Carolina	523,360	462,546	(60,814)	-11.6%
North Dakota	64,000	64,000	0	0.0%
Ohio	882,480	789,302	(93,178)	-10.6%
Oklahoma	198,275	177,197	(21,078)	-10.6%
Oregon	219,679	179,638	(40,041)	-18.2%
Pennsylvania	947,733	774,991	(172,742)	-18.2%
Puerto Rico	139,667	114,210	(25,457)	-18.2%
Rhode Island	92,103	78,581	(13,522)	-14.7%
South Carolina	241,922	202,514	(39,408)	-16.3%
South Dakota	64,000	64,000	0	0.0%
Tennessee	684,796	628,094	(56,702)	-8.3%
Texas	1,369,008	1,222,446	(146,562)	-10.7%
Utah	103,269	99,038	(4,231)	-4.1%
Vermont	64,000	64,000	0	0.0%
Virginia	434,442	355,257	(79,185)	-18.2%
Washington	439,702	359,558	(80,144)	-18.2%
West Virginia	157,627	140,442	(17,185)	-10.9%
Wisconsin	364,654	298,189	(66,465)	-18.2%
Wyoming	64,000	64,000	0	0.0%
State Total	**20,140,157**	**17,336,032**	**(2,804,125)**	**-13.9%**
Virgin Islands	20,000	20,000	0	0.0%
Postage	580,745	499,968	(80,777)	-13.9%

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Federal Register

Friday,
March 25, 2005

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Congestion, Delay Reduction and Operating Limitations at Chicago O'Hare International Airport; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2005–20704; Notice No. 05–03]

RIN 2120–AI51

Congestion and Delay Reduction at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing this rule to address persistent flight delays related to over-scheduling at O'Hare International Airport (O'Hare). This proposed rule is intended as an interim measure, because the FAA anticipates that the rule would yield to longer term solutions to traffic congestion at the airport. Such solutions include an application by the City of Chicago that, if approved, would modernize the airport and reduce levels of delay, both in the medium term and long term. For this reason, the proposed rule includes provisions allowing for the limits it imposes to be gradually relaxed and in any event would sunset in 2008.

DATES: Send your comments on or before May 24, 2005.

ADDRESSES: You may send comments (identified by Docket Number FAA–2005–20704) using the following method:

- 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 20590–001.
- Fax: 1–202–493–2251.
- 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 more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or 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.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Wharff, Office of Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3274.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing 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.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

The High Density Traffic Airports Rule at O'Hare

Until July 2002, the FAA managed congestion and delay at O'Hare by means of the High Density Rule (HDR), which was codified in 14 CFR part 93, subpart K. The FAA's predecessor agency adopted the HDR under its broad authority to ensure the efficient use of the nation's navigable airspace. 49 U.S.C. 40103. The HDR took effect in 1969, and while it originally was a temporary rule, it became permanent in 1973.

The HDR established limits on the number of all take-offs and landings during certain hours at five airports, including O'Hare. In order to operate a flight during the restricted hours, an airline needed a reservation, commonly known as a slot. Slots were initially allocated through scheduling committees, operating under then-authorized antitrust immunity, where all the airlines would agree to the allocation. But after the Airline Deregulation Act in 1978, new entrant airlines formed and the pre-existing, or legacy carriers, sought to expand. This made it increasingly difficult for airlines to reach agreement and the scheduling committees began to deadlock.

In 1984, the FAA amended the HDR to increase the hours in which limitations at O'Hare Airport would apply and to increase the number of take-offs and landings permitted at that airport (49 FR 8237, March 6, 1984). The

next year, a new subpart S was added to part 93 that established allocation procedures for slots including use-or-lose provisions and permission to buy and sell slots in a secondary market (50 FR 52195, December 20, 1985). These procedures replaced the scheduling committees.

Statutory Changes Ending the High Density Rule at O'Hare

In 2000 Congress relaxed the slot rules at the high density airports and phased out the slot rules entirely at three of them including O'Hare. 49 U.S.C. 41715, 41717. With respect to O'Hare, Congress directed that:

(1) Beginning July 1, 2001, the slot control restrictions be limited to the period between 2:45 p.m. and 8:14 p.m.;

(2) Beginning May 1, 2000, exemptions be granted to airlines to provide air service to small airports with 70-seat or smaller aircraft;

(3) 30 slot exemptions be granted to new entrant or limited incumbent air carriers;

(4) After May 1, 2000, slots no longer be required to provide international air service; and

(5) Slot restrictions be lifted entirely after July 1, 2002.

In phasing out the HDR, Congress recognized the possibility that there could be an increase in congestion and delays at the affected airports. Therefore, in the section that phased out the rule, it made clear that ''[n]othing in this section * * * shall be construed * * * as affecting the Federal Aviation Administration's authority for safety and the movement of air traffic.'' 49 U.S.C. 41715(b).

Resurgence of Unacceptable Levels of Congestion

As a result of the 2000 legislation, the slot restrictions of the HDR ceased to exist at O'Hare as of July 1, 2002. While lifting all slot restrictions at O'Hare after July 1, 2002, did not affect air safety, it did eventually lead to a dramatic increase in airline delays, which reverberated throughout the national air transportation system.

Initially, lifting the HDR had a minimal impact on delays due to the lingering effects on airline passenger traffic of the 9/11 terrorist attacks. But by 2003, the two air carriers operating hubs at O'Hare, American Airlines (''American'') and United Airlines (''United'') had added a large number of operations and retimed other flights, resulting in congestion during peak hours of the day. From April 2000 through November 2003, American increased its scheduled operations at O'Hare between the hours of 12 p.m. and 7:59 p.m. by nearly 10.5 percent. Over the same period, United increased its scheduled operations at O'Hare by over 41 percent.

The increases in operations by American and United did not result in a corresponding increase in seat capacity. During the peak period, these two carriers added 375 regional jet operations per day. Overall, American and United added over 600 regional jet operations per day. At the same time as they added regional jet operations, they reduced mainline jet operations. The result was a decrease in seat capacity by each carrier at O'Hare of more than 5.5 percent from April 2000 to November 2003. In November 2003, more than 40 percent of American's and United's O'Hare flights were operated with regional jets, many to large and medium hubs. The significant increases in scheduled operations during this time period resulted in excessive delays and congestion at O'Hare.

By November 2003, O'Hare had the worst on-time performance of any major airport. O'Hare arrivals were on time only 57 percent of the time, well below the FAA goal of 82 percent. Departures were little better. They were on time only 67 percent of the time, well below the average of 85 percent at other major airports. These delays averaged about an hour in duration. Published schedules for February 2004 indicated that the problem would be exacerbated by the addition of even more flights.

Recognizing congestion was again becoming a significant issue, Congress enacted legislation that included a mechanism to help reduce delays and improve the movement of air traffic at congested airports. 49 U.S.C. 41722. That statutory provision authorized the Secretary of Transportation (Secretary) to request that scheduled airlines meet with the FAA to discuss flight reductions at severely congested airports to reduce over-scheduling and flight delays during hours of peak operation, if the FAA determines that it is necessary to convene such a meeting and the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.

In early 2004, the Secretary of Transportation and the FAA Administrator determined that a schedule reduction meeting was necessary to deal with congestion-related delays at O'Hare. Before such a meeting could be convened, however, United and American each agreed to reduce their scheduled flights voluntarily. Accordingly, the schedule reduction meeting was deferred. Instead, the FAA issued an order implementing the voluntary agreement of the two air carriers, Docket FAA–2004–16944–55; 69 FR 5650 (2004). The FAA order required a 5 percent reduction in the two carriers' scheduled operations. This reduction was to be effective between 1 p.m. and 8 p.m. for six-months, beginning no later than March 4, 2004.

The FAA again reviewed O'Hare's on-time performance in March 2004 in light of the ordered schedule reductions. That review showed that the total delay minutes could have been as much as 30 percent higher without the reductions but that delays still remained more than double the level of a year earlier and represented more than a third of the total delays in the United States.

In light of the continued problems at O'Hare, the FAA again discussed the situation with American and United. As a result, on April 21, 2004, the FAA issued an amendment to the previous order in Docket FAA–2004–16944. This amendment required additional flight reductions. Specifically, beginning no later than June 10, 2004, it required (1) an additional schedule reduction of 2.5 percent of each carrier's total operations in the 1 p.m. through 7:59 p.m. hours including arrival reductions during specific times; (2) a reduction in the number of scheduled arrivals in the 12 p.m. hour; and (3) reductions to continue through October 30, 2004.

Prior to the implementation of the June flight reductions, delays at O'Hare continued. In May, there were a record 14,495 total delays. While the numbers in June and July improved, as the last round of cutbacks by American and United took effect, the FAA determined that the overall trend of delays remained unacceptably high. Meanwhile, some airlines that were not party to the agreement involving American and United continued to add flights, making it unlikely that the hub carriers would extend their voluntary schedule reductions without similar commitments by other carriers. Published schedules for November indicated that during several times of the day scheduled arrivals would approach or exceed the airport's highest possible arrival capacity. Accordingly, in July, the Secretary of Transportation and FAA Administrator determined that the scheduling reduction meeting that had previously been deferred now needed to be held (69 FR 46201, August 2, 2004).

The meeting between DOT and the carriers convened on August 4, 2004, and was followed by meetings between Federal officials and individual airlines. As a result, United and American agreed to reschedule and reduce scheduled

arrivals by about 5 percent during peak hours and other airlines agreed not to increase the number of their scheduled arrivals. New entrants and limited incumbents were permitted to add a small number of scheduled flights. Based on the information provided through the meetings and submissions filed in the docket, the FAA issued a comprehensive order on scheduled arrivals at O'Hare on August 18, 2004, limiting arrivals by domestic carriers to 88 during most hours of the day and implementing the above agreement (August 2004 Order). The Order took effect November 1, 2004, and will expire on April 30, 2005. On February 10, 2005, the FAA issued an order proposing to extend the August 2004 Order's effect through October 2005. The FAA sought the views of interested persons on the advisability of extending the August 2004 Order in Docket FAA–2004–16944.

The FAA is reviewing a proposal by the City of Chicago to reconfigure O'Hare and expand its capacity to accommodate existing and future aviation operating demands. However, such a solution, if approved, would yield modest benefits in the near term (2007) and require many years (2013) to be fully realized. The FAA also considered whether any near-term air traffic procedural changes, airspace redesign, or equipage upgrades could provide sufficient capacity or efficiency gains to meet the level of airport demand experienced in late 2003 and much of 2004. Greater utilization of higher capacity runway configurations, some of which are dependent on weather and other operating conditions, could increase O'Hare's average arrival rate. The FAA will continue to monitor the actual and predicted airport operations to ensure that capacity does not routinely go unused. The FAA is reviewing the possibility that additional aircraft might be able to utilize land and hold short operations under more runway configurations, and if approved, this could provide operational arrival and departure benefits. New category II and category III instrumental landing systems for runways 27L and 27R are expected to be operational during fall 2005 and would increase arrival capacity in adverse weather conditions. The FAA is also considering airspace redesign as part of the Midwest Airspace Capacity Enhancement (MACE) plan, including new routes and sectors in the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers, as well as departure and arrival routes in the Chicago airspace area that could increase capacity at O'Hare. Environmental review for these proposed changes is expected to be complete by late 2005. In addition, on January 20, 2005, the FAA implemented reduced vertical separation minima that added six new flight levels between 29,000 and 41,000 feet. The new flight levels increase overall efficiency in the national airspace system. In the future, this may provide alternatives to address the cumulative impact of aircraft departing from O'Hare and other Midwest airports.

The NPRM, as proposed, would allow the FAA to recognize any capacity increases realized before the proposed sunset of the rule by allocating additional arrival authorizations. However, the short-term air traffic control changes will not, in themselves, result in sufficient capacity to meet historic demand. Accordingly, the FAA is now faced with the question of what to do when the August 2004 Order expires. Several courses of action have been considered.

One possibility is to allow the August 2004 Order to expire and to let events run their course without FAA intervention. This would leave no administrative mechanism to prevent each individual airline from increasing its own flights. Air traffic control procedures and traffic management initiatives such as ground delay programs, miles-in-trail restrictions, and aircraft re-routing, would ensure that any additional flights did not affect air safety. The FAA's recent experience with this option is characterized by the congestion-related delays that O'Hare experienced in late 2003. Therefore, the likely outcome of this approach is a renewed, significant increase in total airline flights at O'Hare. Because the cost of the resulting delays is not fully internalized by any individual air carrier, both experience and theory suggest that without any constraint, each carrier would, at least initially, continue adding flights despite an unacceptable level of congestion and delay. It was such a situation that caused the FAA to intervene at O'Hare in early 2004. It has been argued that air carriers could eventually find equilibrium at O'Hare if given enough time. We invite comments on the option of allowing the August 2004 Order to expire and taking no action with respect to air carrier scheduling at O'Hare.

Alternatively, the FAA could extend the August 2004 Order or renegotiate with air carriers for a voluntary schedule over a longer term than the August 2004 Order. As previously noted, the FAA on February 10, 2005, issued an order to show cause, which invites interested parties to comment on the FAA's proposal to extend the August 2004 Order until October 31, 2005. Nevertheless, an extension of the current order may not be desirable for any period longer than is necessary to complete this rulemaking. As the problems faced by air carrier scheduling committees in the 1980s demonstrate, a growing economy will continue to boost passenger demand. In the face of such market pressures, not all carriers may accept the FAA's proposal to extend the August 2004 Order or the issuance of a new order supplanting the August 2004 Order. Additionally, this NPRM raises issues that are not likely to be resolved in the context of a scheduling reduction meeting, including limitations on foreign air carriers and the creation of a blind buy/sell procedure.

The FAA and Office of the Secretary of Transportation (OST) are also considering various administrative and market-based mechanisms that may improve on prior methods of allocating available capacity at an airport where capacity is not able to meet aviation demand. The FAA and OST have contracted with the National Center of Excellence for Aviation Operations Research (NEXTOR) to conduct research on various proposals to implement at LaGuardia airport upon the expiration of the HDR. The market-based mechanisms being researched for LaGuardia airport are among several measures that could be implemented at O'Hare, if capacity improvements are inadequate to achieve delay reduction. However, the research and FAA and OST policy evaluations will not be completed until the latter half of 2005. In addition, while market-based mechanisms are among those being evaluated, they raise many issues, including the most practical implementation of such a regime, the effect of any such program on airfares, consideration of applicable legal requirements, the consistency of such a program with international agreements, the use of any ''surplus'' revenue, as well as the impact on new entrants, small airlines, competition, and service to small communities. An immediate approach is needed to manage the congestion and delays at O'Hare in the interim.

Accordingly, the FAA is proposing a rule to manage congestion and delay at O'Hare until April 6, 2008, by which time one of three possibilities will have presented itself: (1) The first phase of an FAA-approved O'Hare Modernization Plan (OMP) yields enough capacity to obviate the need for government action to address congestion; (2) the first phase of an approved OMP does not yield enough capacity in the medium-term

and continued action is necessary until enough long-term capacity comes on-line; or (3) the OMP is not approved and further action is needed over the medium and long term.

Authority

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary to its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace. The FAA interprets its broad statutory authority to ensure the efficient use of the navigable airspace to encompass management of the nationwide system of air commerce and air traffic control.

In addition to FAA's authority and responsibilities with respect to the efficient use of airspace, the Secretary of Transportation is required to consider several other objectives as being in the public interest, including: Keeping available a variety of adequate, economic, efficient, and low-priced air services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation; encouraging, developing, and maintaining an air transportation system relying on actual and potential competition; encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry; maintaining a complete and convenient system of scheduled air transportation for small communities; ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service; and acting consistently with obligations of the U.S. Government under international agreements. See 49 U.S.C. 40101(a)(4), (6), (10)–(13) and (16), and 40105(b).

The Proposal

Limit on O'Hare Arrivals During Peak Periods

Under the proposed rule, the FAA would limit the number of scheduled flight arrivals at O'Hare from 7 a.m. and 8:59 p.m. local time Monday through Friday and from noon to 8:59 p.m. on Sunday. Scheduled arrivals would be limited to 88 per hour (and to 50 in any half hour) between 7 a.m. and 7:59 p.m.; [1] however, from 8 p.m. to 8:59 the limit on scheduled arrivals would increase to 98. Arrival times would be assigned according to the procedures described elsewhere in this document. Unscheduled flight arrivals (such as, arrivals by general aviation, the military, and certain charter services) would be restricted to four (4) per hour, under an advance reservation system described in proposed Special Federal Aviation Regulation (SFAR) No. 105 Proposed Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport, published by the FAA on October 20, 2004 (69 FR 61708), which after adoption would be replaced by this proposed rule. Thus, arrivals in total would be limited to 92 per hour during all regulated periods (except for the 8 p.m. to 8:59 p.m. hour).

The proposed hourly arrival limits are based on the analysis originally done as part of the delay-reduction proceedings that resulted in the August 2004 Order, the FAA's confidence in the general reliability of its delay-projection models, and the FAA's actual experience with operations at O'Hare following the implementation of the Order. In establishing a target (as required by 49 U.S.C. 41722) for the delay-reduction proceedings, the FAA examined the airport's operations over 140 weekdays from November 3, 2003, through May 14, 2004, and found that it had accommodated an average of 90 arrivals per hour in all weather conditions, including an average of 86 scheduled and four (4) unscheduled flights, during the peak period of noon through 6:59 p.m. Because demand for access to O'Hare is highest at these hours, the arrival rate experienced over this period would tend to indicate the maximum average capacity of the airport under various weather, runway, and operating conditions. The figure also correlated closely to the reported average airport acceptance rate for this period,[2] suggesting that there was little or no unused capacity during these times.

In the delay-reduction proceedings the Administrator had initially set a rate of 86 scheduled arrivals per hour and 22 arrivals for each rolling 15-minute period as a target for industry agreement; this assumed that the historical average of four additional unscheduled arrivals per hour by general aviation, military, cargo, and charter flights would continue. In ultimately deciding to use a somewhat higher arrival rate of 88 scheduled operations per hour in the Order, the Administrator considered information provided by air carriers during the scheduling reduction discussions. These carriers maintained that such a limitation would result in unused airport capacity under many conditions and that the use of a 15-minute limitation on arrivals was overly restrictive and would unnecessarily hamper the carriers' scheduling flexibility. The participants proposed that the FAA consider allowing a scheduled arrival rate of at least 90 flights per hour and constrain operations by no longer than 30-minute periods. The airlines also requested that the FAA allow more flights toward the end of the service day in order to allow them to complete connections and reposition their fleets for the following day.

After consideration of these arguments and the results forecast by the agency's delay-reduction models, the Administrator decided to use a scheduled arrival rate of approximately 88 flights for the period between 7 a.m. and 7:59 p.m. and 98 arrivals in the 8 p.m. hour (which is the end of the ''service day,'' when the effect of any delays on later operations is most limited). The Administrator also determined that the use of a ''rolling'' constraint over each 30-minute period of no more than 50 arrivals (with the exception of the 8 p.m. hour) would achieve a desirable level of delay reduction. The proposed rule, if adopted, would set similar 30-minute limits as were imposed by the Order but would not establish a regulatory process for a ''rolling'' limit. Recognizing that schedule peaking within a short time period significantly increases delays, the FAA intends to closely monitor scheduling practices, and as at other airports, we will encourage carriers to schedule realistically within O'Hare's capacity.

As was the case with the August 2004 Order, the FAA is now proposing to restrict arrivals only, rather than both arrivals and departures, as had been the case under the High Density Rule. Limiting the cap to only arrivals is simpler and lessens the government's intervention in airline scheduling. The number and timing of arrivals usually

[1] The Order provides for 89 arrivals during certain hours to accommodate planned schedule increases by certain limited incumbent carriers. The proposed rule would permit similar exceptions above 88 arrivals per hour in order to account for existing schedules and foreign air carriers.

[2] The airport acceptance rate or airport arrival rate is the number of arrivals an airport is capable of accepting each hour. The rate changes to reflect the impact of weather or other operating conditions on the arrival capacity.

closely correlates to the number and timing of departures. Moreover, in the FAA's experience, arrival delays tend to be more disruptive to the system and cause delays in later flights since a late-arriving aircraft is not available for an on time departure.

In setting the hourly arrival caps in the Order, and proposing the same caps for use in this rule, the Administrator has also relied on analyses performed at the FAA's request by MITRE Corporation,[3] which ran computer modeling to simulate the effect of hypothetical schedule reductions on the level of flight delays at O'Hare. In the FAA's experience, these models are highly reliable in forecasting the effect of various schedules on airport delays. To assess the impact of potential reductions, the FAA and MITRE selected several different O'Hare schedules for air carriers publishing their flights in the Official Airline Guide (OAG) and analyzed them to simulate the resulting delays in arrival queues. For each scenario, MITRE assumed a total of four (4) unscheduled flights per hour; because the exact times these flights arrive are unknown, they were randomly assigned arrival times during each hour. Because arrival queuing delays also depend on available capacity at ORD (which can change with runway, weather and operating conditions), actual hourly arrival capacity was included for each weekday in the model.

The models predicted that constraints used in the August 2004 Order (that is, an arrival rate of approximately 88 scheduled and four unscheduled operations per hour, together with the 30-minute constraints discussed above) would reduce O'Hare delays by approximately 20 percent from the levels then attributable to schedules in effect at the time of the August 2004 Order. The FAA also simulated the results of a completely unconstrained schedule—using the industry's then-proposed November 2004 schedules—and calculated that delays under the Order would be approximately 43 percent less severe than would be experienced if no action were taken and those November 2004 schedules were allowed to take effect.

Preliminary results of the Order, as reflected in FAA's calculated O'Hare on-time performance statistics for the month of November, 2004, confirm that the arrival limitations adopted in the Order have materially reduced delays and thus support adopting identical limitations in the proposed rule. Although the reduction in delays has somewhat exceeded the FAA's forecast, the Administrator believes that there is insufficient data to support a relaxation of those limits. During this rulemaking proceeding, however, the FAA will continue to review the proposed limitations and, if justified by the models and actual delay statistics, consider whether the limitations should be modified in response to changing conditions at O'Hare. In addition, as described below, the proposed rule provides for the FAA periodically to reevaluate the available capacity at O'Hare and to make adjustments in the arrival limits as warranted.

As proposed, the rule would maintain the limitations on arrivals assignments established in the August 2004 Order. Until a final rule is adopted in this rulemaking, the cumulative delay statistics and modeling results may demonstrate to the Administrator that increasing the number of arrivals above what is proposed in this notice will still allow for acceptable operational performance. If so, the arrival cap on scheduled operations may be raised in a final rule, if adopted.

It is also possible that air traffic procedural changes or other enhancements will result in a limited increase in arrival capacity over the duration of the proposed rule. Therefore, the FAA will periodically reexamine the level of available capacity at O'Hare. Under the proposed rule, every six months, the FAA would review the level and length of delays, operating conditions at the airport and other relevant factors to determine whether more arrivals can be allowed. The FAA estimates for the purposes of this proposal that such a review would, in no event, result in hourly arrivals in excess of O'Hare's current capacity under optimal conditions, which is 100 arrivals per hour.

The FAA also is considering whether the final rule should provide a mechanism through which the level of available capacity would be adjusted based on considerations other than delays and efficiency concerns. Specifically, we seek comment on whether the hourly limits on Arrival Authorizations should be adjustable based on broader public interest concerns as set forth in 49 U.S.C. 40101 (a) (including keeping available low-priced air services, maintaining a system relying on actual and potential competition, and encouraging new entry), and if so, which concerns. Further, we seek comment on whether the process to make such adjustments shall be established in the rule or whether standing exemption authority should be relied upon.

Initial Assignment of Arrival Authorizations

Under the proposal, the FAA would initially assign Arrival Authorizations[4] based on the terms of August 2004 Order, as amended. The FAA would first look to the scheduled arrivals for each affected domestic carrier in effect from November 1, 2004 through November 7, 2004.[5] Thus, if a carrier published a daily scheduled arrival at 1 pm in the first week of November, it would retain that arrival time by receiving the assignment of an Arrival Authorization for that operation. In this manner, the arrivals permitted under the August 2004 Order would be preserved. The FAA would rely on its records to determine when an arrival had been scheduled during the first week of November and which carrier held the appropriate authorization. Each initial Arrival Authorization would be for the corresponding 30-minute period indicated by the FAA's records. In the event that a carrier had not published a scheduled arrival during the first week of November to which it was entitled under the August 2004 Order, the terms of the Order would control.

The FAA would publish its proposed initial assignment of scheduled Arrival Authorizations 14 days before the effective date of the rule. The FAA Vice President, System Operations Services for the Air Traffic Organization would be the final decision-maker with respect to the initial assignment of scheduled Arrival Authorizations.

By assigning Arrival Authorizations to each carrier in a manner that corresponds with the arrivals actually scheduled by such carrier during the first week of November 2004, the FAA intends to minimize any operational or economic disruption to the airline industry upon implementation of the proposed rule. Assignment of Arrival Authorizations to carriers currently holding them would avoid immediate disruption of air service to the public.

Additionally, the schedules flown during that seven-day period reflect an

[3] MITRE is a not-for-profit corporation working with government clients. It addresses issues of critical national importance, combining systems engineering and information technology to develop innovative solutions. MITRE's work is focused within three Federally Funded Research and Development Centers, one of which performs systems research and development work for the Federal Aviation Administration and other civil aviation authorities.

[4] An Arrival Authorization is the operational authority assigned to an air carrier or foreign air carrier by the FAA to conduct one scheduled IFR arrival operation each week on a specific day of the week during a specific 30-minute period at O'Hare.

[5] We chose the first week of November because that was the first seven-day period during which the August 2004 Order was effective.

agreement reached between each domestic and Canadian air carrier and the FAA as part of the voluntary schedule reduction discussions that occurred in August 2004 under the auspices of section 41722 of Title 49. Each carrier thus would be able to maintain the schedule it put in place when the August 2004 Order was adopted and which it accepted after negotiation. The FAA is concerned that other assignment methods—such as a random lottery of authorizations—would not be consistent with the results of the voluntary discussions.

The proposed assignment method is also consistent with the FAA's handling of similar issues in the past, such as the slot allocation and transfer methods under the High Density Rule, 50 FR 52180, December 20, 1985. Concerns were expressed in the context of that rule that grandfathering existing slot allocations would confer a financial windfall on incumbent carriers and adversely effect new entrants. While acknowledging the benefit to incumbent carriers, the Department believed there, as here, that this effect was necessary in order to minimize disruption of existing service patterns.

Code-Sharing Arrangements

The FAA proposes that, with a limited exception explained below, each Arrival Authorization would be allocated solely to the carrier that actually operated the flight, regardless of any code-sharing agreements. We acknowledge that in other proceedings, the Department has determined whether there is an affiliate relationship by looking to the designator code or other code-sharing arrangement.[6] We are concerned that this approach would artificially restrict the growth opportunities of limited incumbents at O'Hare. Although code-sharing agreements are common in parent-subsidiary type relationships, they are also increasingly present in marketing arrangements between carriers that are essentially independent and largely control their own sales. If the FAA were to deem an affiliate relationship to exist by virtue of code-sharing agreements alone, code-share partners like American and Alaska would become affiliated carriers for purposes of this rule. This would have the effect of denying Alaska the opportunities afforded other limited incumbents not involved in code-sharing agreements.

At the same time, in making our initial Arrival Authorization determinations, the FAA does not intend to assign Arrival Authorizations to a carrier that is essentially operating its service as a contractor for another carrier and does not market its services independently and in its own name. If we were to treat these contract carriers as independent carriers, a carrier with a significant number of incumbent Arrival Authorizations could take advantage of preferences for new entrants and incumbents by entering into affiliate relationships with the sole purpose of increasing their number of Arrival Authorizations. Thus, under the proposal, where the operating carrier conducts the flight solely under the control of another carrier, the carrier controlling the inventory of the flight would receive the assignment.

Treatment of Foreign Carriers

The FAA proposes assigning Arrival Authorizations to foreign carriers based on seasonal usage. (Canadian carriers are treated differently from other foreign carriers under this rule as discussed in detail below.) Because there is more seasonal variation in international service some foreign carriers could be excluded from the initial assignment or be assigned Arrival Authorizations that do not match their scheduled summer operating times if assignments were based only on November 2004 schedules. Accordingly, we propose establishing a seasonal assignment procedure whereby a foreign carrier's initial assignment of Arrival Authorizations would be based on its published schedules for the winter season that began October 2004 and for the summer season that began April 2004. The FAA Vice President, Systems Operations Services for the Air Traffic Organization would be the final decision-maker with respect to the initial assignment of scheduled Arrival Authorizations.

Categories of Operators

Upon the initial assignment, all carriers would fall into one of three following categories: incumbent, limited incumbent or new entrant. A new entrant would be a carrier that does not operate any Arrival Authorizations at O'Hare and, has never held an Arrival Authorization. A limited incumbent carrier would be a carrier that operates eight or fewer Arrival Authorizations at O'Hare and has never sold or given up an Arrival Authorization. All other carriers would be treated as incumbent carriers.

We recognize that canceling limited incumbent status for a carrier that chooses to sell an Arrival Authorization could discourage legitimate business choices. The practical impact, however, is merely the loss of a preference for future Arrival Authorization assignments; the carrier also retains the ability to obtain Arrival Authorizations on the same basis as any other incumbent. We have tentatively determined that the approach toward limited incumbents presented here represents a fair treatment of carriers that are not new entrants but that should be afforded some additional consideration due to their limited presence at the airport. The proposed definition here is consistent with the August 2004 Order.

Treatment of New Entrants/Limited Incumbents and New Capacity

The competing policy considerations that the Administrator weighed in her August 2004 Order confront the agency again today, because demand for access to O'Hare still exceeds capacity.[7] Although the law directs the FAA to manage the safe and efficient use of the navigable airspace,[8] we also look to DOT's mandates, overall Congressional policy,[9] and the public interest for guidance.

Several factors here suggest that it would be appropriate to provide a preference to new entrants and limited incumbents at the airport. First, as we noted above, the Secretary of Transportation considers a number of matters in the public interest when carrying out the Department's functions, including ''placing maximum reliance on competitive market forces and competition.'' [10] Second, the Airline Deregulation Act of 1978, which reduced the regulation of domestic and international air transportation, enunciated pro-competitive policies. When addressing airport access issues, Congress has frequently favored new entrants over incumbents.[11] Congress has added provisions to the statutes governing airport grants and passenger facility charges to encourage airports to adopt policies that will promote competition.[12] Third, past OST and FAA rules and orders relating to flight restrictions at the high density airports

[6] Cf. 49 U.S.C. 41714(k).

[7] Under the order, the two hubbing carriers at the airport were the only carriers that reduced operations and retimed a number of flights. These carriers also represent the largest carrier investment in operations and infrastructure at the airport. However, these carriers correspondingly have added a very large number of flights in the last three years. (During peak hours and from April 2000 to November 2003, American added 56 flights, United added 225 and the net increase of all other carriers at the airport was six.)

[8] 49 U.S.C. 40103(b).

[9] *See, e.g., Delta Air Lines* v. *CAB*, 674 F.2d 1 (D.C. Cir. 1982).

[10] 49 U.S.C. 40101(a)(6).

[11] 49 U.S.C. 41714(c), (h), 41716(b), 41717(c), 41718(b)(1).

[12] 49 U.S.C. 40117(k), 47106(f), and 47107(s).

also took into account the need to promote competition through new entry and expansion by limited incumbents.[13]

Thus, as capacity becomes available during the duration of the rule, the FAA proposes to establish a limited preference for new entrants and limited incumbents. If the capacity grows per hour from 88 up to 90 arrivals, any capacity not needed to accommodate foreign air carriers would be assigned by lottery to new entrants and limited incumbents. If Arrival Authorizations remain, they would be assigned to incumbent carriers on an interim basis until the next lottery, when they would again be made available first to new entrants and limited incumbents.

Once the capacity reaches 90 per hour, the preference for new entrants and limited incumbents would be suspended until these rules terminate. Any new capacity resulting in additional Arrival Authorizations would then be assigned by lottery with no preference based on carrier identity. At that point all carriers would be placed on an equal footing.

Our proposal to continue to favor new entrants and limited incumbents in the lottery process is consistent with the equities of the situation at O'Hare. The two largest airlines have added a very large number of flights in the last three years. While this build-up was lawful, it resulted in congestion at O'Hare, as stated earlier. Even under this proposal, American and United will still operate the vast majority of flights at O'Hare, with a greater percentage of Arrival Authorizations at O'Hare than they had slots under the HDR before its phase-out, and thus the two airlines will have a substantial ability and greater flexibility than rivals to shift flights in response to consumer demand and initiatives taken by competitors. We tentatively believe that this proposal represents a reasonable compromise between promoting competition and recognizing the substantial investments of existing carriers at O'Hare. We invite commenters to discuss whether the limited preference for new entrants and limited incumbents would promote competition (and if so, what form the competitive benefits might take), and whether the service benefits potentially obtainable from the hubbing airlines' networks argue against the preference in the allocation of arrival rights if the FAA determines that the airport's capacity will allow 89 or 90 scheduled hourly arrivals.

Blind Buy/Sell

The proposal does not create property rights in any assignment of Arrival Authorizations. However, the purchase and sale of Arrival Authorizations would be allowed, in order to advance the goals of promoting the most efficient use of the airspace and maximizing reliance on market forces. See for example, paragraphs (6) and (12) of section 40101(a) of Title 49 of the United States Code. Permitting such transactions will promote operating efficiency and minimize the need for on-going government intervention in the assignment and distribution of O'Hare Arrival Authorizations. There would be no further need for the FAA to engage in the lengthy negotiations with airlines, as it had to do throughout 2004. Nor will there be any risk that these negotiations would fail to bear fruit leaving some airlines dissatisfied or all airlines with a serious congestion and delay problem. Each airline will enjoy an equal opportunity to adjust its schedules though the purchase or sale of Arrival Authorizations.

Under the High Density Rule the Department received complaints about the buy/sell process as it was implemented. The rule permitted the buyer and seller to deal directly with each other and therefore the identity of the carriers were known to each other. Various parties complained to the Department that incumbent carriers would refuse to sell to a new entrant or other airline that could pose a competitive threat. Some airlines and other entities have complained that they were not even aware of opportunities to purchase slots.[14]

To prevent airlines from engaging in this sort of collusion or purposely not selling to a particular competitor, sales of Arrival Authorizations under this proposal would be permitted only through a blind market overseen by the FAA. This would ensure that new entrants and all other airlines have an equal opportunity to purchase Arrival Authorizations. The offer to sell an Arrival Authorization would be posted in a manner that would ensure notice to all airlines and give all airlines an equal opportunity to bid without disclosing the identity of the seller. Similarly, the identity of the bidders would not be disclosed until the highest bid is accepted and the transfer of the authorization is made.

The only consideration permitted for transactions in the blind market would be money. Use of real property such as gates, non-monetary assets or other services in lieu of cash would not be permitted. Also, under the proposal, Arrival Authorizations obtained by a carrier in a lottery by virtue of the carrier's status as a new entrant or limited incumbent could not be sold or leased until they had been used for at least twelve months, except that they could be sold or leased within that period to another new entrant or limited incumbent. Such a restriction is consistent with the approach taken by the agency under the HDR, which restricted new entrants and limited incumbents from selling or leasing slots obtained in a lottery for two years thereafter (unless transferred to another new entrant or limited incumbent). Our proposal would help ensure that airlines seeking an allocation of slots actually intend to use the slots they acquire while fulfilling an important policy objective with respect to competition at O'Hare.

An airline seeking to sell an Arrival Authorization would have to provide 30 days' notice to the FAA with the Arrival Authorization number, times, frequencies, and effective date. The FAA would post information about the proposed sale and closing date for bids. Information identifying the seller would not be posted. Offers to buy must be made by the closing date. The FAA would forward the highest bid to the seller without any identification of the proposed buyer. The seller would have three business days to make a decision. If the seller accepts the bid, the FAA would notify the winning bidder and require both airlines to submit the necessary information to transfer the Arrival Authorization. The buyer may not use the Arrival Authorization until the FAA has received written confirmation of the transfer. A record of each sale will be kept on file by the FAA and be made available to the public upon request. Only airlines would be allowed to participate in this market.

Although sales under the blind buy-sell would be allowed as described above, the proposed rule does not currently provide for leasing and sub-leasing of these authorizations.

[13] *See, e.g.*, 14 CFR 93.225 (lottery of available slots); High Density Airports: Notice of Extension of the Lottery Allocation and Notice of Lottery for Limited Slot Exemptions at LaGuardia Airport 66 FR 41294 (Aug. 7, 2001) (expanding the scope of new entrants eligible to participate in the lottery to those that did not participate in the Dec. 4, 2000, including those that had not applied for the AIR–21 slot exemptions by Dec. 4, 2000); High Density Airports, 67 FR 65826 (Oct. 28, 2002) (adopting the new entrant preference procedure for reallocating withdrawn or returned lottery slot exemptions at LaGuardia). In *Northwest Airlines* v. *Goldschmidt*, the court agreed that an allocation of slots to carriers that increased low-fare service would be consistent with the pro-competitive policy established by the Airline Deregulation Act of 1978. (645 F.2d 1309 (8th Cir. 1980)).

[14] The DOT has docketed three petitions on this subject in recent years. Dockets OST–2004–18586, OST–2002–13650, and FAA–2001–9156. The petitions are available for review on the DOT's Web site.

However, the FAA is considering allowing carriers to lease (and sublease) Arrival Authorizations, because leasing would provide carriers greater flexibility and promote the more efficient use of Arrival Authorizations. Leasing would allow carriers to adjust their schedules based on changing seasonal or market conditions, and it would make it easier for carriers to enter new markets and determine whether market conditions justified the purchase of Arrival Authorizations.

However, as explained above, we would require a blind market for the sale of any Arrival Authorization in order to prevent collusion and efforts by an Arrival Authorization holder to sell Arrival Authorizations to its weakest competitor rather than the carrier that could use the Arrival Authorizations most efficiently and profitably. A rule allowing the lease of Arrival Authorizations must similarly include conditions that would prevent collusion and deny the lessor carrier the ability to choose which competitor could lease its Arrival Authorizations. The FAA therefore believes that leases and subleases, if allowed, should be negotiated only through a process emulating the proposed blind market for the sale of Arrival Authorizations. A lessor thus would give the FAA notice of its intent to lease Arrival Authorizations, the FAA would invite other carriers to bid for the lease, no consideration other than cash could be offered by the lessee, the lease would not restrict the lessee's ability to use the Arrival Authorizations, and the lessor would determine at most the length of the lease (alternatively the rule could set a minimum length for all leases of Arrival Authorizations). The FAA invites comments on the potential impact of a rule allowing leases and subleases.

One-for-One Trades

In addition, the proposed rule would permit the one-for-one exchange of Arrival Authorizations between airlines so long as no additional consideration was provided. Under the proposal, these exchanges must be publicly disclosed and could take place outside of the blind market because many of these arrangements are for operational reasons and could be accomplished only through multi-carrier trades. Such exchanges would be an effective way to deal with variations in seasonal demand and airline business strategies. The authorizations could not be used until written confirmation of the transaction is received from the FAA.

Canadian Carriers

In 1995, the U.S. and Canadian governments entered into a bilateral agreement that phased in elements of an open trans border aviation regime between the two countries. At the time that the U.S. and Canada adopted the bilateral agreement, the HDR was still in effect at O'Hare. Annex II of the agreement specifically addressed access to O'Hare.

Annex II provided Canadian air carriers with a base level of 36 O'Hare arrival and departure slots during the summer season and 32 arrival and departure slots during the winter season. Under the agreement, the U.S. could not withdraw slots from a Canadian air carrier for reallocation to another air carrier for international operations or for reallocation to a new entrant air carrier if withdrawing the slot would reduce the Canadian air carriers below the base level. Nevertheless, all O'Hare slots operated by Canadian air carriers were subject to the minimum slot usage requirement in the HDR that governed the operations of U.S. air carriers.

Annex II also allowed Canadian air carriers to obtain slots at O'Hare under the same allocation system as U.S. air carriers. However, the FAA could withdraw any slots obtained by Canadian air carriers above the base level at any time for the FAA's operational need.

As a result of the 1995 bilateral agreement, the O'Hare slots of Canadian air carriers, which previously consisted of international slots, in effect converted to domestic slots. The bilateral agreement would likewise apply to the assignments of Arrival Authorizations at O'Hare under this proposed rule. Accordingly, the FAA proposes to treat Canadian air carriers identically to U.S. air carriers in this proposal, except that arrivals initially assigned to Canadian carriers will not be subject to withdrawal to accommodate other foreign carriers or new entrants.

Foreign Carriers

We propose to apply the rule described in this notice to foreign carriers in order to ensure a single regulatory framework governs all scheduled operations at O'Hare. While the August 2004 Order did not limit the number of foreign carrier flights (foreign air carriers could not participate in the scheduling-reduction discussions under 49 U.S.C. 41722), the Order did include these operations in determining the hourly limit of 88 arrivals per hour. The August 2004 Order also stated that the FAA planned to list O'Hare as a Schedules Facilitated Airport, Level 2, under the International Air Transport Association (IATA) guidelines. The FAA has made that designation for the summer 2005 scheduling season and foreign carriers were requested to submit their proposed schedules to the FAA in advance for review. The rule, as proposed, would mean that O'Hare is a Fully Coordinated Airport, Level 3, under IATA guidelines and the FAA would list it accordingly. The FAA would generally follow the IATA Worldwide Scheduling Guidelines to the extent they do not conflict with adopted rules and procedures.

The proposal would treat foreign carriers somewhat differently from U.S. and Canadian carriers because foreign airline services to the United States (and U.S. airline services to foreign countries) are subject to intergovernmental air services agreements imposing obligations on the United States and the foreign government. In addition, there are differences in the manner in which U.S. airlines and foreign airlines typically operate at O'Hare.

Each international air services agreement typically obligates the United States and the foreign government party to ensure that the flag carriers of each party have a fair and equal opportunity to compete in the market. The United States thus has some obligation to provide access to O'Hare for foreign airlines. U.S. carriers similarly need adequate access to slot-controlled airports overseas. Any rule governing Arrival Authorizations at O'Hare must allow the United States to comply with its obligations under international agreements and preserve reciprocal treatment on access to Arrival Authorizations and slots. Furthermore, as we stated in the August 2004 Order imposing temporary limits on O'Hare operations agreed upon by U.S. airlines, most foreign airlines operate only a few flights at O'Hare. Only three of the 22 non-Canadian foreign airlines serving O'Hare as of August 19, 2004, operated three or more daily roundtrips. Airlines serving a number of important international markets cannot, moreover, schedule flights throughout the day. Instead, operational and market demands require carriers to schedule their flights during a relatively small part of the day (the afternoon and evening for arriving transatlantic flights, for example). Foreign airlines are also more likely to operate seasonal services. Most of the U.S. airlines serving O'Hare, especially the two hubbing airlines, would hold a significant number of Arrival Authorizations and so would have some ability to shift flights

between domestic and foreign routes. In contrast, each foreign airline has been limited to serving its international routes and in any event would have few Arrival Authorizations.

With respect to the initial assignment of Arrival Authorizations, foreign airlines would be treated in a similar fashion to their domestic counterparts. However, in recognition of the greater seasonality in international operations, each foreign airline would be assigned Arrival Authorizations for the winter traffic season based on its published schedules for the winter season that began October 2004 and for the summer season that began April 2004. Moreover, foreign carriers, except Canadian carriers, would not be allowed to sell any of the Arrival Authorizations initially assigned to them. Also, these Arrival Authorizations would not be subject to any of the proposed minimum usage provisions described below. Nonetheless, an authorization initially assigned to a foreign airline would have to be returned to the FAA if not used during any fifteen-day period.

There are two options being considered with respect to the treatment of foreign carriers in the context of providing additional access to O'Hare beyond initial assignments or for new entry.

Under the first option (the administrative option), the FAA would accommodate requests by foreign carriers for new or additional access administratively. The FAA would provide these Arrival Authorizations out of any unused Arrival Authorizations that FAA may have or an Arrival Authorization may be withdrawn from a U.S. airline. Foreign air carriers would not be able to buy, sell or lease Arrival Authorizations or to participate in any lottery; however, they could participate in one-for-one trades as described above.

Under the second option (the elective option), to obtain Arrival Authorizations above their initial assignments, if any, foreign carriers could elect to request an Arrival Authorization administratively, as described above, or to be treated as U.S. and Canadian carriers are treated. In other words, a foreign carrier could decide that it would rather obtain arrivals for new entry or additional access through a lottery or blind market. With respect to arrivals obtained through those means, a carrier would be subjected to the same rules as U.S. and Canadian carriers, although foreign carriers would still not be able to buy, sell or lease their initial assignments

A foreign carrier pursuing the opportunity to be treated as U.S. and Canadian carriers under the elective option would not be allowed at a later point to seek access to Arrival Authorizations from the FAA as described in the administrative option. Similarly, any carrier that obtains an arrival reservation as described in the first option could not later decide that it wanted to be treated the same as U.S. and Canadian carriers. The election to be treated one way or the other would be made the first time a foreign carrier sought an Arrival Authorization above its initial assignment after the rule goes into effect.

These options should provide a transparent mechanism for foreign airlines to exercise the right to serve Chicago provided for in our bilateral air services agreements. Under any of these approaches, of course, the Department of Transportation would reserve the right to take action with respect to any foreign air carrier whose homeland was not providing to U.S. air carriers equivalent rights of access to its airports, as determined by the Secretary of Transportation.

We seek comments on the relative merits of these two options.

Minimum Usage Requirements

The FAA is considering whether the proposed rule should include a minimum usage requirement for Arrival Authorizations held by U.S. or Canadian air carriers and if so, what requirement to put in place. (As proposed, the rule would not impose any such requirement on foreign air carriers but would also limit the transferability of Arrival Authorizations held by them.) The FAA requests comments on the relative merits of (1) not imposing any minimum usage requirement, (2) requiring that each authorization be used at least 90 percent of the time (or be withdrawn), or (3) periodically requiring that least utilized Arrival Authorizations be withdrawn.

One alternative is not to impose any minimum usage requirement. Under this alternative, each air carrier would be free to use, or not use, its authorizations as it sees fit. Allowing each air carrier to determine the most efficient use of its Arrival Authorizations is arguably consistent with a free marketplace and would remove any incentive that may otherwise exist for airlines to operate flights solely to preserve their allotment of authorizations from the FAA. Because unnecessary flight operations only serve to worsen the problem of congestion at O'Hare, a use-or-lose scheme could undermine the effectiveness of the proposed rule. At the same time, however, in the absence of a minimum use requirement, air carriers who hold the largest positions at O'Hare and hence the most authorizations could hoard existing authorizations to increase the value of their holdings or simply to deprive competitors of greater access to the airport.

The second alternative is to adopt a ''use-or-lose'' provision that would require air carriers to utilize each authorization they hold at least 90 percent of the time over a two-month reporting period. Any Arrival Authorization used less frequently would be withdrawn after notice to the holder; we anticipate, however, that each carrier receiving such notice would first sell the affected authorizations on the secondary market. Under this alternative, the 90 percent usage requirement would apply only during the restricted hours (that is, Saturdays and Sunday mornings, as well as other non-regulated hours would be excluded from the usage requirement). The Thanksgiving, Christmas, and New Year's holiday periods would also be excluded. The use or lose requirement would also be waived initially for newly acquired authorizations, during a strike, or in other circumstances as determined by the FAA. In order to implement this provision, a periodic reporting requirement would be imposed.

Under the High Density Rule the FAA imposed a minimum usage requirement of 80 percent; the standard was criticized as too lax. Adopting a 90 percent use-or-lose requirement would ensure that a scarce public resource, arrival times at O'Hare, is exploited to the greatest possible extent. Requiring a utilization rate of 90 percent over a 2-month period also makes it more difficult for carriers holding authorizations to allocate cancellations among their base of holdings. In comments concerning the High Density Rule, the staff of the Bureau of Economics of the Federal Trade Commission (FTC) submitted a comprehensive analysis showing that most airlines slot usage met or exceeded the proposed 90 percent minimum for weekday slots in any event. Nevertheless, the FAA invites comments on whether a 90 percent threshold is so high that it may cause airlines to lose authorizations due to unforeseen scheduling conflicts that they could have used productively at a lower threshold.[15]

The third alternative is to periodically identify the least utilized Arrival Authorizations and require that they be

[15] The proposed use-or-lose requirement would include similar waivers that existed under the HDR's use-or-lose rule that would provide exceptions for exigencies such as bad weather or mechanical problems.

withdrawn for reassignment. Under this option, Arrival Authorizations ranking in the bottom one (1) percent in frequency of usage would be identified by the FAA, and each holder would be given notice that the authorizations would be withdrawn by a certain date. This option would provide a strong incentive to use this scarce resource to the maximum extent possible but would leave airlines unsure as to how much use is required in order to avoid losing the authorization. Since, the airlines generally would not have access to the usage statistics of their competitors, this option could leave authorization holders uncertain as to how much use is required in order to avoid losing the authorization.

The FAA is considering two methods for reassigning authorizations withdrawn as a result of usage requirements described above. Under either method the agency would consider foreign carrier needs before making a reassignment. Under the first method, the FAA would conduct a lottery, consisting of two rounds. In the first round, only new entrants and limited incumbents would be permitted to participate. In the second round any remaining Arrival Authorizations would be assigned by lottery to incumbent carriers at O'Hare.

Under the second method, carriers losing Arrival Authorizations would be required to sell them in the FAA's blind market. A carrier would be notified that it has failed to meet the usage requirement 45 days before the Arrival Authorization is to be withdrawn. It would then be posted for sale in the blind auction; however, new entrant and limited incumbent carriers would have preference in purchasing these withdrawn Arrival Authorizations. Incumbent carriers would have the chance to buy any Arrival Authorizations that were not purchased by new entrant or limited incumbent carriers, except that a carrier could not bid on an Arrival Authorization that had been withdrawn from it. Proceeds of a sale would go to the airline that lost the authorization and any unsold authorizations would be returned to the airline that lost them.

The FAA requests comments on the relative merits of these two reassignment methodologies for withdrawn Arrival Authorizations.

Reversion of Arrival Authorizations

As discussed above, Arrival Authorizations are not property rights but are temporary operating privileges. As such, they remain subject to FAA control. We propose allowing them to be bought and sold, subject to FAA restrictions, in order to promote their most efficient use. However, they may be withdrawn at any time to fulfill operational needs such as accommodating new entry by foreign carriers or to eliminate Arrival Authorizations due to reduced capacity. Arrival Authorizations would be withdrawn in accordance with the priority number originally assigned to each individual Arrival Authorization. A limited incumbent carrier would be protected from reversion of Arrival Authorizations. If the FAA determines that capacity must be reduced for a specified period of time, for example if a runway were temporarily closed, Arrival Authorizations would be withdrawn. Once the capacity is resumed, the withdrawn Arrival Authorizations would be returned to the carriers from which they were withdrawn.

The proposal also provides that all of the Arrival Authorizations held by any carrier would revert to the FAA if that carrier ceases all operations at O'Hare for any reason other than a strike or labor dispute.

The FAA proposes that for 12 months following a new entrant and limited incumbent lottery, an Arrival Authorization acquired by a new entrant or limited incumbent would be withdrawn by the FAA upon the sale, merger, or acquisition of more than 50 percent ownership or control of the carrier using the Arrival Authorization or one acquired by trade of that Arrival Authorization, if the resulting total of Arrival Authorizations assigned to the surviving entity would exceed eight.

Sunset Date

Although arrival caps are being proposed in this rule, imposing caps on the use of airport capacity does not meet aviation demand; rather, such caps artificially limit operations during certain hours to achieve the benefit of delay reduction. The FAA's preferred approach to reducing delay and congestion is to increase airport infrastructure so that capacity meets demand. Because a timely increase to airport capacity is not always feasible, alternative measures may be necessary to address congestion that adversely affects the efficiency of the national airspace system.

In light of the adverse impact that significant congestion-related delays at O'Hare have on airlines and passengers using that airport, and the collateral effect of such delays on the national airspace system, the FAA proposes in this notice to cap by regulation the number of arrivals at O'Hare during peak hours. The proposed rule includes a sunset date of April 6, 2008. If additional O'Hare capacity that is sufficient to abate the airport's significant delays does not become available within the period of this rule, the FAA may consider other congestion management techniques, such as market-based mechanisms. We would consider replacing this rule with such an alternative if doing so would be practical and otherwise comport with applicable policies and legal requirements.

The FAA proposed an April 2008 sunset date for a number of reasons. As previously noted, the City of Chicago has produced an O'Hare Modernization Program that the City of Chicago represents will adequately increase airport capacity and reduce levels of delay. A final FAA decision on the City's application is expected in September 2005. The first phase of the O'Hare Modernization Program, if approved, is expected to come on line in 2007. In addition, work is ongoing to improve the Instrument Landing Systems for runways 27L and 27R, which will improve their performance in adverse weather conditions. The proposed April 2008 sunset date for the FAA's proposed rule would address the present conditions at O'Hare until the benefits of any interim capacity enhancements are realized.

If the FAA does not approve the City of Chicago's O'Hare Modernization Program in 2005, the FAA would need to devise an alternative mechanism for limiting congestion and delay at O'Hare. Some of the market-based mechanisms under consideration require legislation and/or regulatory changes before they could be put into practice. An April 2008 sunset date for this proposed rule would provide the FAA with the time to develop and an alternate mechanism for use at O'Hare.

Despite the FAA's proposed sunset of this rule in April 2008, it is possible that an earlier sunset provision could be appropriate. If an alternative method to allocate capacity were identified, it might be possible to implement that method prior to 2008. It is also possible that changes in the airline industry could obviate the need for a congestion management rule at O'Hare before April 2008. In such an event, an earlier sunset would cause the FAA to revisit sooner the need to manage congestion at O'Hare. The FAA is specifically soliciting comments on whether this proposed rule should sunset before April 2008.

Small Community Air Service

In ''grandfathering'' the air carriers' existing schedules, the proposed rule

would enable airlines to continue operating all existing air service to small communities. Although the rule could provide for the withdrawal of Arrival Authorizations from air carriers in order to augment service to small communities, it does not do so. Nevertheless, the impact of this proposed rule on the quality of service to small communities will be monitored. If the quality of service to small communities is adversely affected, remedial action may be taken.

General Aviation and Other Unscheduled Operations

On October 20, 2004, the FAA published in the **Federal Register** proposed Special Federal Aviation Regulation No. 105 to address unscheduled operations at O'Hare (69 FR 61708). The proposal provided for a minimum of four arrivals per hour for unscheduled operators, including general aviation, military, cargo, and certain charter operations. The comment period for this proposal closed on November 1, 2004. The FAA intends to issue a final rule with respect to these operations. This final SFAR would subsequently be incorporated into this rule so that all operational limits on aircraft arrivals at O'Hare are in the same subpart.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Congestion and Delay Reduction at Chicago O'Hare International Airport.

Summary: The purpose of this rulemaking project is to adopt operational limits on the number of scheduled peak hour operations at O'Hare International Airport as an interim measure to manage congestion and delays. The rule would grant carriers at O'Hare the right to utilize the Arrival Authorizations until the rule sunsets on April 6, 2008. For the purpose of ensuring operational efficiency, the rule would permit one-for-one trades amongst the carriers, but the sale and lease of Arrival Authorizations would be conducted in a blind secondary market. In addition, the proposed rule incorporates provisions to modify the hourly operational limits if capacity at O'Hare expands.

Use of: Under this proposal, air carriers would be permitted to buy, sell and lease Arrival Authorizations in the blind secondary market. An airline seeking to sell an Arrival Authorization would have to provide 30 days' notice to the FAA with the Arrival Authorization number, times, frequencies, and effective date. The FAA will post information about the proposed sale and closing date for bids. Air carriers that participate in the blind market transaction would be required to submit their bid to the FAA. The only consideration permitted for transactions in the blind market would be money. Use of real property such as gates, non-monetary assets or other services in lieu of cash would not be permitted.

The proposed rule also permits the FAA to hold lotteries to allocate Arrival Authorizations to new entrants and existing air carriers at O'Hare. The FAA would publish a notice in the **Federal Register** announcing the lottery dates and any special procedures for the lotteries. Any air carrier, or foreign air carrier seeking to participate in any lottery must notify the FAA in writing, and such notification must be received by the FAA 15 days prior to the lottery date. The carrier must also disclose in its notification whether it has Common Ownership, as defined in this proposal, with any other carrier and, if so, identify such carrier.

Should a minimum usage requirement be adopted in this proposed rule, every scheduled U.S. air carrier and Canadian air carrier holding Arrival Authorizations would have to forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

Respondents (including number of): The respondents to this proposed information requirement are operators of scheduled service at O'Hare, as well as any new entrant airline that intends to operate at O'Hare. FAA analysis indicates there may be as many as 50 operators participating in the blind secondary market transactions.

Frequency: The FAA anticipates conducting blind secondary market transactions whenever appropriate, depending upon whether any carriers indicate a desire to sell their Arrival Authorizations. The FAA would conduct lottery allocations as needed to allocate Arrival Authorizations as they become available. Under a Minimum Usage Requirement, U.S. and Canadian air carriers would be required to submit usage reports (as described above) every two months.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

The FAA blind market is expected to operate at least twice a year, depending upon the desire of carriers' to sell Arrival Authorizations. For purposes of estimating the time burden of participation in the blind market, we assumed transactions would be conducted electronically. Since participants in the blind market could submit bids using an Internet web interface using electronic information technology, FAA does not expect the submission of bids to require new capital equipment. FAA would conduct lotteries as necessary to allocate available capacity. Similar to the blind market, lotteries could be conducted electronically. FAA analysis indicates there may be as many as 50 operators participating in each lottery and bi-annual blind market.

A proposed Minimum Usage reporting requirement would require U.S. and Canadian air carriers to submit reports on usage of their Arrival Authorizations every two months. If a minimum usage requirement is adopted, there are currently 12 domestic and Canadian air carriers that would be subject to the reporting requirement. Each reporting air carrier would be required to submit 6 annual reports; resulting in less than 20 reports over the term of the proposed rule.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of providing required 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.

Individuals and organizations may submit comments on the information collection requirement by May 24, 2005, and should direct them to the address listed in the **ADDRESSES** section of this

document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, And Unfunded Mandates Assessment

This section of the regulatory analysis provides a summary of the preliminary regulatory evaluation results, the initial regulatory flexibility determination, the trade impact assessment and the unfunded mandates impact assessment.

Introduction

Changes to Federal regulations must undergo several regulatory impact analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 §§ 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this proposed rule (1) has benefits that justify its costs, is a major, economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not adversely affect international trade; and (4) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, set forth in this document, are summarized below.

Total Costs and Benefits of This Rulemaking

- FAA estimates that this proposed rule would result in a 42 percent reduction in delay at O'Hare, generating present value *benefits* of $741 million relative to November 2003 delays.
- The total cost of this proposed rule includes air carrier costs associated with a loss in schedule flexibility and reduction in flights, passenger inconvenience as a result of fewer choices and potentially higher fares, and direct administrative costs of $1.13 million.

Who is Potentially Affected by This Rulemaking

- Operators of scheduled flights at O'Hare.
- Commercial airlines (incumbents—more than 8 arrivals; limited incumbents—8 or fewer arrivals; new entrants—do not yet operate at O'Hare; foreign operators).
- All communities, including small communities with air service to O'Hare.
- Passengers of scheduled flights to O'Hare.
- Chicago, Department of Aviation—municipality of O'Hare.

Key Assumptions

Principal Key Assumptions

- Baseline Flight Operations and Delay—OAG Schedule November 20, 2003 (1,454 daily arrival flights).
- Constrained Flight Operations and Delay—OAG Schedule—November 18, 2004 (1,430 gross daily arrival flights/1387 net daily flights adjusted for 3 percent cancellation rate); constrained to 88 scheduled arrivals per hour plus 4 unscheduled arrivals per hour.
- Daily Flight Completion Factor: 97 percent Daily Flight Cancellation Factor: 3 percent.
- Unscheduled arrivals are constrained to 4 arrivals per hour.
- No lost revenue due to cancelled flights—All passengers are rebooked or rerouted to their destination.
- Delay improvement over the baseline schedule is 12 minutes per flight (17,887 total minutes per day)—equivalent to a 42 percent improvement in delay—This delay improvement estimate was derived from MITRE's Queuing Delay Model, which measures delays of 1-minute or more against the OAG flight schedule.
- Annual estimates are adjusted to reflect the 1.5 days per week when the limits are not in effect (all day Saturday and until noon on Sunday).

Other Important Assumptions

- Discount Rate—7 percent.
- Period of Analysis—November 1, 2005 through April 6, 2008.
- Assumes 2005 Current Year Dollars.
- Rule Sunsets April 6, 2008.
- Operator Delay Cost Savings.
- Aircraft average variable costs per block hour—$1,935 per hour.
- Passenger Delay Cost Savings.
- Passenger Value of Time—$28.60 per hour.

Alternatives We Have Considered

- FAA considered four major alternatives to manage congestion and delays at O'Hare.
- Alternative #1—Let the August 18, 2004 order expire on April 30, 2005. Based on history, operators would likely continue to expand operations, further worsening airport delays.
- Alternative #2—Extend the August 18, 2004 order by issuing a show cause order as a bridge between the August 18th order and the proposals of this rulemaking action. It is difficult to obtain voluntary agreement and the operators would be unable to extend operations beyond the 88 arrivals per hour set by the order.
- Alternative #3—Implement a market-based solution such as an auction or congestion pricing. The FAA is exploring the feasibility of these solutions under a research project for LaGuardia airport. The results are not expected until later in 2005.
- Alternative #4—Implement this proposed rule, which would provide an interim solution.
- FAA is seeking comment on three options concerning minimum usage of Arrival Authorizations. The three options are:
- Option 1—No minimum usage requirements.

• Option 2–90 percent minimum usage required over a two-month period.

• Option 3—Bottom 1 percent utilized Arrival Authorizations over a six-month period could be withdrawn and reassigned through the blind market or lottery.

• FAA is seeking comments on two options concerning how foreign carriers might gain access to O'Hare, beyond the initial assignment of Arrival Authorizations. These two options are as follows:

• Administrative option—FAA could assign Arrival Authorizations out of any unused Arrival Authorizations or withdrawal an authorization from a U.S. carrier.

• Elective Option—Foreign carriers can elect to be treated the same as U.S. and Canadian operators and participate in assignment through lottery and blind market to gain additional access to O'Hare.

Benefits of This Rulemaking

• The primary benefits of this rule are derived from airline delay cost savings and passenger delay cost savings. Table 1 shows the annual benefits in present value dollars, which reflect the proration for the 5.5 days per week the operational caps are in effect, and the flight completion factor of 97 percent. The total benefits in present value dollars are $741 million.

TABLE 1.—TOTAL ANNUAL BENEFITS OF THE ORD NPRM

[present value dollars]

	Airline delay cost savings	Passenger delay cost savings	Total benefits
2005	$28,265,932	$28,316,101	$56,582,032
2006	154,726,729	156,263,982	310,990,711
2007	144,604,420	148,069,608	292,674,028
2008	39,789,877	41,304,825	81,094,702
Total:	367,386,958	373,954,516	741,341,474

• The major factors used to develop an estimate of annual airline delay cost savings are presented in Table 2 below. Given the total delay improvement of 17,887 minutes, and the average variable costs per block hour $1,935, airlines would save more than $367 million dollars (present value dollars), cumulatively over the life of the proposed rule.

TABLE 2.—AIRLINE DELAY COST SAVING

	Total daily arrivals	Average total delay (minutes) per day	Average total delay (hours) per day	Average variable operating costs per hour	Annual airline delay cost savings (nominal dollars)	Present value airline delay cost savings
2005	1,387	17,887	298	$1,935	$28,265,932	$28,265,932
2006	1,387	17,887	298	1,935	165,557,600	154,726,729
2007	1,387	17,887	298	1,935	165,557,600	144,604,420
2008	1,387	17,887	298	1,935	48,744,311	39,789,877
Total	.....	.....	.....	.....	408,125,443	367,386,958

• Table 3 below gives a breakdown of the factors used to compute the passenger delay benefits of this proposed rule. The right-hand column of the table contains the annual dollar amounts of the benefits. To estimate benefit, the hours of delay improvement are prorated for the days of the year the flight limits are in effect. The total passenger delay costs savings are $374 million in present value dollars.

TABLE 3.—PASSENGER DELAY COST SAVINGS

	Total daily arrivals	Average seats	Load factor	Passengers per flight	Passengers per day	Passengers' average delay per arrival	Annual delay hours	Passenger value of time	Annual passenger delay cost savings (nominal dollars)	Present value of passenger delay cost savings
2005	1387	103.9	0.701	73	101,028	12	990,073	$28.60	$28,316,101	$28,316,101
2006	1387	104.3	0.704	73	101,851	12	5,846,240	28.60	167,202,461	156,263,982
2007	1387	105.3	0.707	74	103,266	12	5,927,444	28.60	169,524,894	148,069,608
2008	1387	106.3	0.705	75	104,689	12	1,675,018	28.60	50,600,187	41,304,825
Total:	.....	.....	.....	.....	.....	.....	.....	.....	415,643,643	373,954,516

• The FAA expects additional benefits from the use of the blind market and lottery mechanisms. These provisions would allow airlines to efficiently allocate Arrival Authorizations to where they are valued the most. In making their scheduling choices, the market mechanism proposed in this rule should allow

airlines to more efficiently allocate resources in an effort to avoid higher than average delay costs or to serve passengers that have a higher than average value of their time, therefore improving the overall efficiency of the national airspace and leading to greater benefits than those estimated in this analysis using average cost. This provision also minimizes the need for on-going government intervention in the allocation and distribution of O'Hare Arrival Authorizations and ensures that new entrants and all other airlines have an equal opportunity to purchase authorizations.

• Additional delay cost savings are derived from national airspace system-wide delay improvements, which result from the delay improvements at O'Hare, as well as delay improvements from reduced departure delays at other airports impacted by delay from O'Hare. We have not included these delay benefits in the quantitative analysis.

Costs of This Rulemaking

• The total cost of this proposed rule includes air carrier costs associated with a loss in schedule flexibility and reduction in flights, passenger inconvenience as a result of fewer choices and possibly higher fares, and direct administrative costs.

• The direct administrative costs of this proposed rule cover the blind market costs incurred by buyers and sellers of the Arrivals Authorizations, the public costs of developing and managing the blind market, and other administrative and compliance costs.

• The direct administrative costs of this proposed rule are an estimated $1.134 million in present value dollars, as shown in the last column of Table 4. The largest costs are the E-Bid administration costs of $194,184, which covers FAA's costs for the semi-annual blind market operations, and the other administration costs of $601,894, which covers the costs for operating the lottery, and general compliance and reporting requirements of the rule.

• The costs associated with a loss in air carrier schedule flexibility and reduction in the number of flights are difficult to quantify. However, the FAA believes this impact is minimal since passenger demand could likely be accommodated through alternative routings and access to Chicago. We invite comments on this impact.

• FAA acknowledges that the proposed rule would limit arrivals at O'Hare and thus could reduce the number of airline operations below the number that would be operated if no cap were imposed on O'Hare arrivals. This effect has the possibility of limiting competition and allowing carriers to raise fares; however, FAA believes the impact on competition would not be significant given the competitive market pressures internal and external to O'Hare, and the short duration of this proposed rule.

TABLE 4.—PRESENT VALUE OF ANNUAL ADMINISTRATIVE COSTS

	FAA E-bid development costs	E-bid system operating costs	FAA E-bid admin costs	Other admin costs	Reporting costs	Total costs
2005	$150,000	$8,333	$53,578	$44,649	$28,760	$285,320
2006	.....	46,729	50,073	250,366	21,156	368,324
2007	.....	43,672	46,797	233,987	19,772	344,228
2008	.....	13,605	43,736	72,893	6,789	137,023
Total:	150,000	112,339	194,184	601,895	76,477	1,134,895

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation''. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

While there would be more than just a few small entities affected by this proposed rule, the FAA determined that it would not impose a significant economic impact on small entities. The FAA considered the economic impact on scheduled operators and small communities.

The proposed rule affects all scheduled operators at O'Hare, more than just a few of which are small entities (where ''small entities'' are firms with 1,500 or fewer employees). The arrivals of all carriers currently providing service at O'Hare would be grandfathered, thereby minimizing the impact on their schedules. For their given schedules, this proposed rule would lower their fuel burn costs substantially by reducing the delays experienced prior to the August 2004 order.

As capacity becomes available during the duration of the rule, the FAA proposes to establish a limited preference for new entrants and limited incumbents, many of which are likely to be small entities. If the capacity grows per hour from 88 to 89 or 90 arrivals, any capacity not needed to accommodate foreign carriers would be assigned by lottery to new entrants and limited incumbents. Therefore, this proposal favors small entity operators.

In ''grandfathering'' the air carriers'' existing schedules, the proposed rule would enable airlines to continue operating all existing air service to airports of communities with populations less than 50,000. Consequently, we do not expect this proposed rule to negatively impact airports in small communities.

Therefore, the FAA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA is proposing to apply the rule to foreign operators to create a rule governing all scheduled and non-scheduled operations at O'Hare.

The FAA has assessed the potential effect of this proposed rule and determined that it would not adversely affect any trade-sensitive activity as discussed below. Thus, this proposed rule would not create unnecessary obstacles to the foreign commerce of the United States.

Under this proposed rule, foreign operators would be given an initial assignment of Arrival Authorizations based on past usage. Further, they may have some discretion in terms of gaining additional access to O'Hare beyond being accommodated administratively. One option for foreign carriers would include permitting the foreign carriers to be treated the same as U.S. operators in the allocation of additional arrivals at O'Hare and should provide a transparent mechanism for foreign airlines to exercise the right to serve O'Hare provided for in our bilateral air service agreements.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed rule does not contain such a mandate. Therefore, the-requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Environmental Analysis

This NPRM is subject to an environmental review under the National Environmental Policy Act (NEPA) as described in FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. It has been determined that the NPRM falls within a group of actions that the FAA has found, based on past experience with similar actions, do not normally require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) because they do not individually or cumulatively have a significant effect on the human environment. This NPRM falls under Categorical Exclusion 312F. Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment). The NPRM proposes an interim solution to manage the immediate problem of congestion and delay at O'Hare by limiting the number of flight arrivals during certain hours. It has been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add subpart B to part 93 of chapter I of title 14, Code of Federal Regulations, as follows:

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

PART 93—[AMENDED]

2. Subpart B is added to read as follows:

Subpart B—Congestion and Delay Reduction at Chicago O'Hare International Airport

Sec.

§ 93.21 Applicability.
§ 93.22 Definitions.
§ 93.23 Arrival Authorizations.
§ 93.24 [Reserved]
§ 93.25 Initial assignment of Arrival Authorizations to U.S. and Canadian air carriers.
§ 93.26 Withdrawal and reversion of Arrival Authorizations.
§ 93.27 Sale of Arrival Authorizations.
§ 93.28 One-for-one trade of Arrival Authorizations.
§ 93.29 Foreign air carriers.
§ 93.30 Lottery provisions.
§ 93.31 Minimum usage requirement.
§ 93.32 Administrative Provisions.
§ 93.33 New capacity.
§ 93.34 Sunset provision.

Subpart B—Congestion and Delay Reduction at Chicago O'Hare International Airport

§ 93.21 Applicability.

(a) This subpart prescribes the air traffic rules for the arrival of aircraft, other than helicopters, at Chicago's O'Hare International Airport (O'Hare).

(b) [Reserved]

(c) This subpart also prescribes procedures for the assignment, transfer, sale and withdrawal of Arrival Authorizations issued by the FAA for scheduled operations by air carriers, foreign air carriers and other operators at O'Hare.

(d) The provisions of this subpart apply to O'Hare during the hours of 7 a.m. through 8:59 p.m. central time, Monday through Friday, and 12 p.m. through 8:59 p.m. Central Time on Sunday. No person shall operate any scheduled arrival IFR arrival into O'Hare during such hours without first obtaining an Arrival Authorization.

(e) No Arrival Authorization issued or assigned under this subpart shall constitute the property of any person regardless of any purchase, sale, or transfer thereof or any contract or agreement entered into by any person concerning an Arrival Reservation or Arrival Authorization.

(f) Carriers that have Common Ownership shall be considered to be a single air carrier or foreign air carrier for purposes of this rule.

§ 93.22 Definitions.

Arrival Authorization is the operational authority assigned to an air carrier or foreign air carrier by the FAA to conduct one scheduled IFR arrival operation each week on a specific day of the week during a specific 30-minute period at O'Hare.

Arrival Reservation is the operational authority to conduct one unscheduled IFR arrival on a specific day of week during a specific 30-minute period at O'Hare.

Common Ownership with respect to two or more air carriers or foreign air carriers means having in common at least 50 percent beneficial ownership or effective control by the same entity or entities.

Incumbent means any air carrier or foreign air carrier that is not a New Entrant or Limited Incumbent.

Limited Incumbent means any air carrier or foreign air carrier that has received 8 or fewer Arrival Authorizations from the FAA, none of which it has sold or otherwise transferred, other than one-for-one transfers permitted in this part. Any limited incumbent that sells or otherwise transfers an Arrival Authorization shall thereafter be treated as an Incumbent for purposes of this rule.

New Entrant means any air carrier and foreign air carrier that does not operate any Arrival Authorizations at O'Hare and has never held an Arrival Authorization.

Preferred Lottery means a lottery conducted by the FAA to assign Arrival Authorizations, with initial preference for new entrants and limited incumbents.

Scheduled Arrival is the arrival segment of any operation regularly conducted by a carrier between O'Hare and another point regularly served by that carrier.

Summer Scheduling Season is the period of time from the first Sunday in April until the last Sunday in October.

Winter Scheduling Season is the period of time from the last Sunday in October until the first Sunday in April.

§ 93.23 Arrival Authorizations.

(a) Except as otherwise established by the FAA Vice President, System Operations Services under § 93.33 of this subpart, the number of Arrival Authorizations shall be limited to:

(1) 88 per hour between the hours of 7 a.m. and 7:59 p.m. Monday through Friday and 12 p.m. and 7:59 p.m. Sunday, and

(i) Not to exceed 50 during each half-hour beginning at 7 a.m. and ending at 7:59 p.m.

(ii) Not to exceed 88 within any two consecutive 30-minute periods.

(2) 98 between 8 p.m. and 8:59 p.m. Monday through Friday, and Sunday, not to exceed 67 between 8 p.m. and 8:30 p.m.

(b) An Arrival Authorization is not a property right but rather a temporary operating privilege subject to absolute FAA control. Only certificated air carriers and foreign air carriers may hold Arrival Authorizations. Arrival Authorizations may not be used as collateral, pledged, assigned, transferred or hypothecated to another person, except as provided in the §§ 93.27 and 93.28 of this subpart.

(c) On January 1, 2006, and on each six-month anniversary thereafter, the FAA shall conduct a review of existing capacity at O'Hare, to determine whether to increase the number of Arrival Authorizations or Arrival Reservations. The FAA will consider the following factors:

(1) The number of delays;

(2) The length of delays;

(3) Weather conditions;

(4) On-time arrivals, and

(5) Other factors relating to the efficient management of the national air space system.

(d) The Administrator may increase the number of Arrival Authorizations based on the review conducted in paragraph (c) of this section.

§ 93.24 [Reserved]

§ 93.25 Initial assignment of Arrival Authorizations to U.S. and Canadian air carriers.

(a) The FAA shall assign to each U.S. and Canadian air carrier that published a scheduled arrival for any day during the 7-day period of November 1 through 7, 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each scheduled arrival.

(b) If a U.S. or Canadian air carrier did not publish a scheduled arrival during the period of time referenced in paragraph (a) of this section, but was entitled to do so under the August 18, 2004, ''Order Limiting Scheduled Operations at O'Hare International Airport'' a corresponding Arrival Authorization shall be assigned for that arrival.

(c) Arrival Authorizations will be assigned to the carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless such carrier did not market the flight under its own code and the inventory of the flight was, by contract, under the control of another air carrier. If inventory of the flight was under the control of another air carrier, the FAA shall assign the Arrival Authorization to that air carrier.

(d) The FAA Vice President, System Operations Services, shall be the final decision-maker for determinations under this section.

§ 93.26 Withdrawal and reversion of Arrival Authorizations.

(a) The FAA may withdraw or temporarily suspend Arrival Authorizations at any time to fulfill operational needs, such as to accommodate arrivals by foreign air carriers, or due to reduced airport capacity.

(b) An air carrier's Arrival Authorizations revert automatically to the FAA 30 days after the air carrier has ceased all operations at O'Hare for any reasons other than a strike or labor dispute.

(c) Any Arrival Authorization that is temporarily withdrawn under paragraph (a) will, if reassigned, be reassigned to the carrier from which it was withdrawn, provided that the carrier continues to conduct scheduled operations at O'Hare.

(d) The FAA shall not withdraw any Arrival Authorizations if the result would be to reduce an air carrier's total number of Arrival Authorizations below eight.

(e) Except as otherwise provided in paragraph (b) of this section, Arrival Authorizations will be withdrawn in accordance with the priority list established under § 93.32(a) of this subpart.

(f) Except as otherwise provided in paragraph (b) of this section, the FAA will notify the affected air carrier before withdrawing any Arrival Authorization and specify the date by which operations under the authorizations must cease. Except as otherwise required by operational needs, the FAA will provide at least 45 days' notice.

(g) If a New Entrant or Limited Incumbent carrier is assigned an Arrival Authorization in a Preferred Lottery conducted under § 93.30 of this subpart and within 12 months thereafter enters into a definitive agreement providing for the sale, merger, or acquisition by another person of more than 50 percent ownership or control of the carrier, the Arrival Authorizations assigned in the lottery shall revert to the FAA to the extent that the total number of Arrival Authorizations assigned to the surviving entity would exceed eight.

(h) No Arrival Authorizations may be withdrawn from a Canadian carrier to accommodate arrivals by other foreign air carriers or New Entrants if such withdrawal would reduce the number of Arrival Authorizations held by that Canadian carrier below the number assigned that carrier under § 93.25.

§ 93.27 Sale of Arrival Authorizations.

(a) No carrier may sell its Arrival Authorizations at O'Hare other than in accordance with the procedures in this section and in the manner prescribed by the Administrator.

(b) Only monetary consideration may be provided in any transaction conducted under this section.

(c) New Entrants and Limited Incumbents may not sell any Arrival Authorizations assigned through a Preferred Lottery within 12 months of such assignment, except to another new entrant or limited incumbent.

(d) A carrier seeking to sell an Arrival Authorization must provide the following information in writing to the FAA at least 30 days before the planned sale date:

(1) Arrival Authorization number and time,

(2) Frequencies available; and

(3) Planned effective date of transfer.

(e) The FAA will post a notice of the available Arrival Authorization and specific information concerning the transaction on the FAA Web site (insert address). The notice will provide a closing date and time by which bids must be received. Information identifying the carrier providing the Arrival Authorization for sale will not be posted or released by the FAA.

(f) The FAA must receive all bids by the closing date and time, and no extensions of time will be granted. Late bids will not be considered. All bids will be held confidential, with each bidder certifying in a form acceptable to the FAA that its bid has not been disclosed to any person not its agent.

(g) The FAA will forward the highest bid to the selling air carrier without identifying the bidder. The selling air carrier will have up to three business days to accept or reject the bid. The selling air carrier must notify the FAA of its acceptance no later than 5 p.m. eastern time on the third business day.

(h) Upon acceptance, the FAA will notify the winning carrier and request that the buyer and the seller submit to the FAA the written information (Arrival Authorization number, frequencies and effective date of transfer) required to transfer the Arrival Authorization.

(i) Written evidence of each carrier's consent to the transfer must be provided to the FAA in a form acceptable to the FAA, and each carrier must certify that only monetary consideration will be exchanged.

(j) The recipient carrier of the transfer may not use the Arrival Authorization until the conditions in paragraph (i) of this section have been met and FAA has approved the transfer.

(k) The FAA will keep a record of all bids received and of each Arrival Authorization transfer, including the identity of both air carriers' and the winning bid price, all of which will be made available to the public upon request.

§ 93.28 One-for-one trade of Arrival Authorizations.

(a) Any air carrier or foreign air carrier may exchange an Arrival Authorization it has been assigned with another carrier on a one-for-one basis for the purpose of conducting that operation in a different half-hour time period.

(b) Written evidence of each carrier's consent to the transfer must be provided to the FAA.

(c) The recipient of the transfer may not use the Arrival Authorization until written confirmation has been received from the FAA.

(d) A record of each Arrival Authorization exchange will be kept on file by the FAA and made available to the public upon request.

(e) Carriers participating in a one-for-one transfer must certify in a form acceptable to the Administrator that no other consideration will be or has been provided for the exchange.

§ 93.29 Foreign air carriers.

(a) This section applies to all foreign air carriers other than Canadian air carriers. The Department of Transportation reserves the right to withhold the assignment of any Arrival Authorization to any foreign air carrier of a country that does not provide equivalent rights of access to its airports for U.S. air carriers, as determined by the Secretary of Transportation.

(b) The FAA shall initially assign Arrival Authorizations to foreign air carriers for winter and summer scheduling seasons as follows:

(1) Winter Scheduling Season. The FAA shall assign to each foreign air carrier that published a scheduled arrival during the Winter Scheduling Season that began October 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each arrival.

(2) Summer Scheduling Season. The FAA shall assign to each foreign air carrier that published a scheduled arrival during the Summer Scheduling Season that began April 2004, as evidenced by the FAA's records, a corresponding Arrival Authorization for each arrival.

(3) Arrival Authorizations will be assigned to the carrier that actually operated the flight regardless of any codeshare or marketing arrangement unless such carrier did not market the flight under its own code and the inventory of the flight was, by contract, under the control of another carrier. If inventory of the flight was under the control of another carrier, the FAA shall assign the Arrival Authorization to that carrier.

(4) The FAA Vice President, System Operations Services shall be the final decision-maker for determinations under this subsection.

[Option 1—Administrative Option]

(c) A foreign air carrier may request new or additional Arrival Authorizations for a Summer Scheduling Season or a Winter Scheduling Season pursuant to this section. Such requests shall be made at a time and in a manner prescribed by the Administrator. If the request is granted, the FAA shall withdraw Arrival Authorizations from air carriers under § 93.26 of this subpart if an Authorization Arrival is not otherwise available within one hour of the requested time.

(d) Each request for Arrival Authorizations under this section shall specify the days of the week and time of day of the preferred Arrival Authorization and the length of time the Arrival Authorizations are to be used. The request must be accompanied by a certified statement by an officer of the foreign air carrier stating that it possesses or has contracted for possession of an aircraft capable of being utilized in the Arrival Authorizations requested and that it has *bona fide* plans to use the requested Arrival Authorizations for operation. The FAA Vice President, System Operations Services shall be the final decision-maker for determinations under this subsection.

(e) Arrival Authorizations assigned under this section cannot be bought or sold under § 93.27, but may be traded on a one-for-one basis under § 93.28 of this subsection.

(f) Arrival Authorizations assigned under this section are not subject to minimum usage requirements under § 93.31 of this subpart but will revert to the FAA if not used for 15 consecutive days.

[Option 2—Elective Option]

(c) After the date of the initial assignments in subsection (b) of this section, a foreign air carrier may request new or additional Arrival Authorizations for a Summer Scheduling Season or a Winter Scheduling Season. Such requests shall be made at a time and in a manner prescribed by the Administrator. A foreign air carrier seeking new or additional Arrival Authorizations must elect to receive additional Arrival Authorizations under the assignment procedures of either paragraph(c)(1) or (c)(2) of this section:

(1) If a foreign air carrier requests a new or additional Arrival Authorization and an Arrival Authorization is not available within one hour of the requested time, and if the request is granted, an Arrival Authorization shall be withdrawn from an air carrier under § 93.26 of this subpart to accommodate the request if an Arrival Authorization is not otherwise available;

(i) Arrival Authorizations assigned under subsections (b) or (c)(1) cannot be bought or sold under § 93.27, but may be traded on a one-for-one basis under § 93.28 of this subpart, to meet the carriers' operational needs

(ii) Arrival Authorizations assigned under subsections (b) or (c)(1) are not subject to usage requirements under § 93.31 of this subpart but will revert to the FAA if not used for 15 consecutive days.

(2) Foreign air carriers seeking new or additional Arrival Authorizations may participate in any lotteries or transactions permitted under § 93.27 and shall be eligible to receive additional assignments of Arrival Authorizations under § 93.33 of this subpart.

(3) A foreign air carrier making an election between §§ 93.29(c)(1) and 93.29(c)(2) above must notify the FAA Slot Administration Office in writing of its election before first requesting Arrival Assignments in addition to those assigned in subsection (b) of this section.

§ 93.30 Lottery provisions.

(a) Whenever the FAA has determined that sufficient Arrival Authorizations have become available for reassignment, they will be assigned in accordance with this section.

(b) Any lottery of Arrival Authorizations that revert under § 93.26(b), or are withdrawn under § 93.31, shall be conducted as a Preferred Lottery as described in paragraph (i) of this section.

(c) Any lottery of Arrival Authorizations that become available as the result of an increase in the hourly limits under § 93.23(a) of this part from 88 Arrival Authorizations to 89 or 90 shall be conducted as a Preferred Lottery as described in paragraph (i) of this section. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have been accommodated may be assigned to any other air carrier participating in the lottery on an interim basis until the next lottery, when such Arrival Authorizations would again be available on a preferred basis to New Entrants and Limited Incumbents.

(d) Any lottery of Arrival Authorizations that become available as the result of an increase above 90 in the hourly limits under § 93.33(b) of this subpart shall be open to all carriers otherwise eligible to participate in the lottery.

(e) The FAA will publish a notice in the **Federal Register** announcing the lottery dates and any special procedures for the lotteries.

(f) Any air carrier, or foreign air carrier seeking to participate in any lottery must notify the FAA in writing, and such notification must be received by the FAA 15 days prior to the lottery date. The carrier must also disclose in its notification whether it has Common Ownership with any other carrier and, if so, identify such carrier.

(g) Except as otherwise provided in paragraph (h) of this section, a random lottery shall be held to determine the order in which participating carriers shall select an Arrival Authorization.

(h) In any Preferred Lottery, each New Entrant and Limited Incumbent will have the opportunity to select Arrival Authorizations, if available, until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have been accommodated may be assigned to any other carrier participating in the lottery.

(i) At the lottery, each carrier must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each carrier has had an opportunity to select Arrival Authorizations, the assignment sequence will be repeated in the same order. A carrier may select one Arrival Authorization during each sequence, except that New Entrants may select two Arrival Authorizations, if available, in the first sequence.

(j) To select Arrival Authorizations during a lottery session, a carrier must have appropriate economic authority for scheduled passenger service under Title 49 of the U.S.C. and must hold FAA operating authority under parts 121, 129 (if appropriate) or 135 of this chapter.

§ 93.31 Minimum usage requirement.

[Option 1—90 Percent Usage]

[Sub-option A—Withdrawal]

(a) Except as provided in paragraphs (b) and (c) of this section, any Arrival Authorizations not used at least 90 percent of the time over a two-month period shall be withdrawn by the FAA upon 45 days' notice to the affected carrier by the FAA Slot Administration Office and held for reassignment by the FAA.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of an air carrier forced by a strike to cease operations using those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the flight number for which the Arrival Authorization was used and the equipment used. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

(e) The Administrator may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions that result in the restricted operation of an airport for an extended period of time or the grounding of any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

[Sub-option B—Sale]

(a) Except as provided in paragraphs (b) and (c) of this section, any Arrival Authorizations not used at least 90 percent of the time over a 2-month

period shall be posted for sale, upon 45 days' notice to the affected carrier by the FAA Slot Administration Office, under § 93.27 of this subpart, except that each New Entrant and Limited Incumbent will have the opportunity to bid on Arrival Authorizations until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have had an opportunity to bid may be auctioned to any other carriers otherwise eligible to bid.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 of this subpart during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of a carrier forced by a strike to suspend the operations that use those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. The report shall identify the flight number for which the Arrival Authorization was used and the equipment used. The report shall identify any Common Ownership or control of, by, or with any other carrier. A senior official of the carrier shall sign the report.

(e) The Administrator may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions which result in the restricted operation of an airport for an extended period of time or the grounding of any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

(g) The affected carrier may not bid on any Arrival Authorization required to be posted for auction under this section and must accept the highest bid notwithstanding § 93.27(g) of this subpart. In the event no carrier offers to purchase an Arrival Authorization required to be posted for auction, the Arrival Authorization may continue to be used by the affected carrier.

[Option 2—Minimum Usage]

[Sub-option A—Withdrawal]

(a) Except as provided in paragraphs (b) and (c) of this section, over a six-month period, Arrival Authorizations ranking in the bottom one percent in their frequency of usage will be withdrawn upon 45 days' notice by the FAA Slot Administration Office to the affected carrier and held for reassignment by the FAA.

(b) Paragraph (a) of this section does not apply to Arrival Authorization obtained under § 93.30 during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of a carrier forced by a strike to suspend the operations that use those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing, to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 6-month reporting period within 14 days after the last day of the 6-month reporting period beginning January 1, 2006. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. A senior official of the carrier shall sign the report.

(e) The Administrator may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions which result in the restricted operation of an airport for an extended period of time or the grounding of any aircraft type.

(f) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

[Sub-option B—Sale]

(a) Except as provided in paragraphs (b) and (c) of this section, over a six-month period, Arrival Authorizations ranking in the bottom one percent in their frequency of usage shall be posted for sale, upon 45 days' notice by the FAA Slot Administration Office to the affected carrier, under § 93.27 of this subpart, except that each New Entrant and Limited Incumbent will have the opportunity to bid on Arrival Authorizations until it holds a total of eight Arrival Authorizations. Arrival Authorizations remaining after all New Entrants and Limited Incumbents have had an opportunity to bid may be auctioned to any other carriers otherwise eligible to bid.

(b) Paragraph (a) of this section does not apply to Arrival Authorizations obtained under § 93.30 of this subpart during:

(1) The first 90 days after they are allotted to a New Entrant; or

(2) The first 60 days after they are allotted to a Limited Incumbent or Incumbent carrier.

(c) Paragraph (a) of this section does not apply to Arrival Authorizations of an air carrier forced by a strike to cease operations using those Arrival Authorizations.

(d) Every air carrier and Canadian air carrier holding Arrival Authorizations shall forward in writing to the FAA Slot Administration Office a list of all Arrival Authorizations held by the carrier along with a listing of the Arrival Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1, 2006 and every 2 months thereafter. The report shall identify the aircraft identifier and flight number for which the Arrival Authorization was used and the scheduled arrival time. A senior official of the carrier shall sign the report.

(e) The FAA will treat as used any Arrival Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday in January.

(f) The affected carrier may not bid on any Arrival Authorization required to be placed up for auction under this section and must accept the highest bid notwithstanding § 93.27(g) of this subpart. In the event no air carriers offer to purchase an Arrival Authorization required to be placed up for auction, the Arrival Authorization may continue to be used by the affected carrier.

§ 93.32 Administrative provisions.

(a) The FAA will assign, by random lottery, withdrawal priority numbers for the recall priority of Arrival Authorizations at O'Hare. The lowest

numbered Arrival Authorization will be the last withdrawn. Newly created Arrival Authorizations will be assigned a priority withdrawal number and that number will be higher than any other Arrival Authorization withdrawal number previously assigned. Each Arrival Authorization will be assigned a designation consisting of the applicable withdrawal priority number, and the 30-minute time period for the Arrival Authorization. The designation will also indicate, as appropriate, if the Arrival Authorization is daily or for certain days of the week only; and is a summer or winter Arrival Authorization.

(b) Whenever Arrival Authorizations must be withdrawn, they will be withdrawn in accordance with the priority list established under paragraph (a) of this section.

(c) Whenever an Arrival Authorization is to be returned under this subpart, or is voluntarily returned by an air carrier, the air carrier must notify the FAA Slot Administration Office in writing.

§ 93.33 New capacity.

(a) If the hourly limit on Arrival Authorizations as specified in § 93.23(a) of this subpart increases to 89 or 90 per hour, new Arrival Authorizations will be assigned by lottery under § 93.30(c) of this subpart.

(b) If the hourly limit on Arrival Authorizations as specified in § 93.23(a) of this subpart should be increased to more than 90 per hour, new Arrival Authorizations will be assigned by lottery under § 93.30(d) of this subpart.

§ 93.34 Sunset provision.

This subpart terminates on April 6, 2008.

Issued in Washington, DC, on March 18, 2005.

Sharon L. Pinkerton,

Assistant Administrator for Aviation Policy, Planning, and Environment.

[FR Doc. 05–5882 Filed 3–22–05; 10:04 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2004–16944]

Operating Limitations at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of order.

SUMMARY: On February 10, 2005, the Federal Aviation Administration (FAA) issued an order to show cause, which solicited written views on extending the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport (O'Hare). The August 2004 order made effective a series of schedule adjustments that the air carriers individually agreed to during a scheduling reduction meeting. These agreements, in general, resulted in a voluntary O'Hare peak-hour arrival rate of eighty-eight scheduled flights, with the exception of the 8 p.m. hour—the final peak hour of the day—when the rate would not exceed ninety-eight scheduled arrivals.

This notice extends the August 2004 order until October 29, 2005. The order was originally scheduled to expire on April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Gerry Shakely, System Operations, Air Traffic Organization: telephone (202) 267–9424; facsimile (202) 267–7277; e-mail *gerry.shakley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Order Extending the August 2004 Limitatation of Scheduled Operations at O'Hare International Airport

On February 10, 2005, the Federal Aviation Administration (FAA) issued an order to show cause (70 FR 7792, Feb. 15, 2005), which solicited written views on extending the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport (O'Hare). The August 2004 order made effective a series of schedule adjustments that the air carriers individually agreed to during a scheduling reduction meeting convened under 49 U.S.C. 41722. These agreements, in general, resulted in a voluntary O'Hare peak-hour arrival rate of eighty-eight scheduled flights, with the exception of the 8 p.m. hour—the final peak hour of the day—when the rate would not exceed ninety-eight scheduled arrivals.

The order to show cause specifically requested written views on two issues. First, it solicited views on extending the duration of the August 2004 order. In the absence of an extension, the August 2004 order would expire on April 30. The order to show cause expressed the FAA's intention to extend the expiration date until October 31, 2005.

Second, the order to show cause sought views on the FAA's reallocation of any unused capacity assigned in the August 2004 order. Specifically, the FAA asked whether it should reallocate any unused capacity through the revised expiration date. If so, the order to show cause asked how the FAA should allocate any such arrival authority.

The FAA's authority to extend the August 2004 order is the same as the authority cited in that order. The FAA proposes to extend the August 2004 order under the agency's broad authority in 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

In addition, the FAA has begun a rulemaking in which it has proposed to adopt a rule that would limit scheduled operations at O'Hare. The proposed rule would take effect upon the expiration of this order limiting scheduled flights at O'Hare and would expire in April 2008.

Extension of the August 2004 Order: A total of eleven respondents filed written views on the FAA's extension of the August 2004 order. The respondents included six air carriers (Air Canada, America West Airlines, American Airlines, Independence Air, United Airlines, and U.S. Airways); one air carrier association (Air Carrier Association of America); the City of Chicago; and three organizations representing general aviation, charter, and other unscheduled operators (National Air Transport Association, National Business Aviation Association, and Mark Travel, Inc.).

None of the respondents representing scheduled air carrier interests opposes an extension of the August 2004 order, but each carrier included additional comments or suggestions.

America West indicated it would not support an extension beyond the proposed October 31 date.

Independence Air questioned whether absent the limitations, carriers would in fact increase flight schedules. The FAA, however, expects that carriers would increase flights and that a substantial increase in congestion and delays at O'Hare would result if the August 2004 order were not extended, based on our experience before we issued that order.

US Airways conditioned its support for the extension on the FAA's determination that an increase in scheduled operations at another Chicago-area airport—Midway Airport—is not causing additional delays at O'Hare. The FAA routinely monitors overall airspace capacity in the Chicago area and elsewhere and attempts to minimize the impact of operations wherever there are closely situated airports. We have specifically evaluated the number of scheduled operations at Midway Airport while the August 2004 order has been in effect and considered the operational impact on O'Hare when the August 2004 scheduling targets were adopted.

Comparing the August 2004 schedules with the March 2005 published schedules, the number of weekday scheduled air carrier operations at Midway Airport has declined about 23% from 732 to 566 per day. In the peak hours from 12 p.m. to 8 p.m. Central Time, the hours during which American Airlines and United Airlines reduced scheduled arrivals at O'Hare under the August 18 Order, Midway scheduled operations have decreased by 25%. Scheduled flights in the 7 p.m. hour, the peak hour in August 2004, have decreased by 37%. Many of these changes may be temporary as some carriers at Midway have announced plans to increase service. However, there is no evidence that the voluntary schedule adjustments at O'Hare have resulted in a significant increase in scheduled flights at Midway Airport or that the operational impact from flights at Midway has worsened since the August schedule discussions. The voluntary limitations in the August 2004 order do not appear to have prevented air carriers at either airport from publishing competitive schedules. Several carriers serve both O'Hare and Midway, as is the case in other cities with multiple airports. No evidence has been presented that the extension of the limits at O'Hare unduly restricts an operator from making service decisions for the Chicago region.

Mark Travel, which is a tour operator that conducts unscheduled public charters at O'Hare, the National Air Transport Association (NATA), and National Business Aviation Association (NBAA) collectively state that the congestion at O'Hare was caused primarily by scheduled air carriers. They request that adequate capacity be allocated to the operators of unscheduled flights at O'Hare. NBAA opposes an extension beyond October 2005, and NATA further opposes any limits on general aviation or other unscheduled arrivals.

The August 2004 order governs only the scheduled arrivals of air carriers at O'Hare and was issued under the FAA's

authority to conduct a scheduling reduction meeting under 49 U.S.C. 41722. The FAA is separately addressing unscheduled arrivals at O'Hare through proposed Special Federal Aviation Regulation No. 105, Docket FAA–2004–19411. In that proceeding, the FAA proposed a reservations system to assign peak-hour unscheduled arrivals at O'Hare. This proposal is based on historical average usage of the airport by unscheduled operations. Under the proposal, the number of reservations available to unscheduled operators could increase during periods when the FAA's Air Traffic Organization determines that O'Hare has excess capacity, such as when weather conditions permit a high arrival rate at the airport. Mark Travel, NATA and NBAA previously filed similar comments in the public docket opened for that proposed rulemaking, and their comments will be addressed in that proceeding.

The City of Chicago's Department of Aviation does not oppose a continued, temporary limitation on scheduled arrivals at O'Hare. However, the City posits that the hourly scheduled arrival rate of eighty-eight during most peak hours, as set forth in the August 2004 order, is too low and should yield to an hourly scheduled arrival rate of ninety-two. In arriving at the rate of eighty-eight scheduled arrivals in the August 2004 order, the FAA relied, in part, on aircraft queuing and delay modeling conducted by MITRE Corporation to simulate the effect of various schedule reductions on the flight delays experienced at O'Hare. We also relied on other operational indicia used by the FAA, such as the airport acceptance rate,[1] the number and duration of delays, on-time performance relative to schedule, and the number of flight cancellations.

In the FAA's experience, MITRE Corporation's queuing model has equated very closely to the flight delays actually experienced. In the case of the August 2004 order, assuming a rate of eighty-eight scheduled arrivals, modeling predicted an average 20% decrease in arrival delay minutes at O'Hare compared to August 2004 published schedules. Over the first four months that the August 2004 order has been in effect, actual air traffic data reflect that passengers at O'Hare have experienced an average decrease in arrival delay minutes of approximately 22%. MITRE Corporation's model also predicted that arrival rates greater than eighty-eight per hour would significantly degrade the delay-reduction benefits that air carriers and their passengers would receive.

The FAA shares the goal of the City of Chicago to set the scheduling target as high as practicable, consistent with average airport capacity and our established delay reduction targets. The scheduling limits adopted in the August 2004 order reflect an increase from the number of arrivals initially proposed by the FAA and are significantly less restrictive than the limits imposed under the High Density Rule, which ceased to apply to O'Hare after July 1, 2002. As indicated by the analyses in the City's comments comparing scheduled arrivals against the recorded airport acceptance rate, the airport acceptance rate at O'Hare in the late summer through October 2004 was higher than that experienced earlier in the year. An airport's acceptance rate and system capacity are largely driven by weather and operating conditions. The actual hourly arrivals may vary from the acceptance rate based on the number and timing of scheduled arrivals, general aviation, charter, and other unscheduled flights, as well as scheduled flights that arrive earlier or later than the published times. Favorable weather conditions in late summer and early autumn and the resulting predominance of optimal or near-optimal acceptance rates indicated by the City, resulted in improved on-time performance and reduced delays at O'Hare.

In November 2004, when the schedule depeaking and reductions took effect, good weather continued to support high acceptance rates. Some additional, well-timed arrivals could have been accommodated in this period without delay impacts. However, since November 2004, adverse weather has decreased the acceptance rate resulting in delays and increased flight cancellations. While performance improved significantly over the previous year, we believe that more operational experience and data are needed before the schedule targets could be raised. We also note that some air carriers have elected temporarily not to use all the arrival allocations assigned to them, so some hours have been below the targeted eighty-eight scheduled arrivals since November 2004. As a result, we are not yet convinced that a peak-hour arrival rate greater than eighty-eight per hour would be sustainable under average operating conditions and provide air carriers and passengers with equivalent delay-reduction benefits. As we indicate in the notice of proposed rulemaking related to O'Hare, we will continue to monitor operations and may propose an increase in the future if warranted. In the interim, the FAA expects to take advantage of opportunities to make capacity available for unscheduled arrivals and other short-term adjustments to meet air carrier scheduling needs.

It is also significant that the August 2004 order makes effective voluntary agreements negotiated during an August 2004 scheduling reduction meeting, which the FAA convened under 49 U.S.C. 41722. The scheduled arrival rate and the air carrier scheduling adjustments set forth in the August 2004 order followed negotiations that included the air carriers, and the order carefully considered their views and the views of the City within the context of the FAA's delay reduction goals. We do not think it wise to issue an order that establishes new scheduled arrival rates without additional supporting evidence and opportunities for air carrier input. The FAA's order to show cause sought views on the narrower proposition of extending the negotiated agreement for six additional months.

As we observed in the order to show cause, the FAA anticipates that extending the August 2004 order for six months would give way to a final rule that will govern, at least in the near term, the number of arrivals at O'Hare during peak hours. In response to the notice of proposed rulemaking, the City and all interested members of the public will have the opportunity to express their views on the proper level of service at O'Hare. The appropriate balance between a high level of service and anticipated increases in flight delays would fall within the scope of any such discourse.

The City also asks the FAA to implement a new procedure to permit land and hold short operations (LAHSO) for MD–80 aircraft on O'Hare's runway 22 Right. The City suggests that such a procedure would increase the aircraft arrival rate at O'Hare. Because a large number of MD–80-series aircraft operate at O'Hare, the FAA acknowledges that the ability to use another runway configuration for LAHSO could increase the airport's arrival and departure capacity. Moreover, the FAA is conducting a review of the performance capabilities of certain MD–80-series aircraft to determine the appropriate landing distances used for LAHSO procedures. The FAA soon expects to validate its preliminary conclusion that at least some of the MD–80-series aircraft would meet the established safety and operational criteria to

[1] The airport acceptance rate or airport arrival rate is the number of arrivals an airport is capable of accepting in an hour. These rates are based primarily on weather conditions, runway configuration, and arrival and departure traffic mix.

conduct LAHSO on O'Hare's runway 22 Right.

While air traffic control may offer a LAHSO clearance, however, it remains the air carrier's role to establish company operating procedures that are consistent with LAHSO requirements, and it is ultimately in the pilot's discretion to accept or reject a LAHSO clearance from air traffic control. Given the additional steps outside the FAA's control that must be accomplished before an operation may use LAHSO procedures, we are unable to predict at this point when, and how often, there would be realized capacity increases due to certain MD–80-series aircraft conducting LAHSO on runway 22 Right. Therefore, even assuming that the FAA could, in extending the August 2004 order, increase the peak-hour arrival rate it identifies, the determination regarding MD–80 aircraft and LAHSO that the City requests could not be factored into any such increase at this time.

The City additionally requests that the FAA exempt all international arrivals (whether conducted by domestic or foreign air carriers) from the limits by not counting them toward the arrival rates for each air carrier specified in the August 2004 order. Under the current order, arrivals by foreign flag carriers, except for Canadian carriers, are not limited. However, there are two important considerations as to the impact of foreign air carrier arrivals. First, the FAA included the number of then-scheduled foreign air carrier arrivals as of August 2004 when determining the cumulative airport demand, and adjustments by domestic air carriers were made based on then-existing foreign air carrier schedules. Second, foreign air carrier operations, at approximately 2.6%, are a relatively small percentage of O'Hare peak hour arrivals, and their overall level has historically remained quite stable. While there has been some shifting of foreign air carrier arrivals from one time period to another, there are limited increases during peak hours planned by foreign carriers for the summer 2005 season.

We do not dispute the City's assertion that the limitations on the international arrival gates and facilities in Terminal 5 would act as a natural constraint on overall international arrivals by both domestic and foreign air carriers. The effect of the City's proposal, however, would be to permit air carriers that operate international arrivals to add more domestic arrivals to fill the place of the exempted international flights, unless there was an corresponding, one-for-one reduction in the number and timing of arrival authorizations currently authorized for either domestic or international arrivals. Given that there are over thirty international arrivals each day by domestic carriers, excluding arrivals from Canada, this could increase the peak-hour arrival rate among the air carriers well above eighty-eight scheduled flights and would correspondingly degrade the delay reductions achieved by the August 2004 order. As we indicated earlier, the FAA is not prepared at this time to increase the scheduling targets beyond the parameters in the August 2004 order. The FAA therefore will not, in the context of extending the August 2004 order, alter the underlying voluntary agreements in the fundamental way that the City recommends.

United Airlines and Air Canada, while not opposed to extending the August 2004 order, pointed out that the proposed expiration date of October 31 differs from the change of season recognized by the International Air Transport Association (IATA). In 2005, the IATA change of season will take place on October 29. The air carriers note that conforming the expiration of the August 2004 order to the IATA change of season would make any schedule changes at the expiration of the order less complicated for air carriers scheduling international operations at O'Hare. This is also consistent with scheduling adjustments made by many domestic operations to recognize the change from daylight savings time to standard time. As a result, and because the FAA does not believe that advancing the expiration of the August 2004 order by two days will either harm any interested party or materially undermine the extension's delay-reduction benefits, the FAA will adopt October 29, 2005, as the new expiration for the August 2004 order.

Reallocation of Unused Capacity: The order to show cause also solicited views on whether the FAA should reallocate, during the duration of the August 2004 order, any arrival authority that is unused by the air carrier to which it was assigned. Because the order implemented a series of voluntary agreements, the FAA believes that it would be advisable to reallocate unused capacity only if there were consensus on reallocation among the air carriers that are parties to these agreements. The written submissions reflect a lack of agreement either on reallocation or on an appropriate reallocation method.

Nine respondents expressed a position on a possible reallocation of unused arrival authority. Air Canada and Independence Air are opposed to the reallocation of unused capacity for the duration of the August 2004 order. In addition, among the seven respondents expressing support for the reallocation of unused arrival authority, the respondents identified at least four mutually exclusive reallocation methods. Two air carriers would accord preference on reallocation to the air carriers that reduced their flight schedules to assist the FAA in arriving at the peak-hour schedule target. Two other air carriers would give preference to limited incumbent air carriers. The City proposed to manage the reallocation of unused capacity through a weighted lottery that accords varying degrees of preference to a number of factors. NATA proposed reserving any unused capacity for unscheduled operations. U.S. Airways supported reallocation but did not identify a reallocation method. Additionally, there was no universally accepted assessment among the respondents of when arrival authority is unused.

Because the comments raise diverse issues that would be more suitably addressed through agency rulemaking or through an additional scheduling reduction meeting rather through an extension of the existing order, for the duration of the August 2004 order the FAA will not reallocate unused arrival authority. As a result, the FAA's Air Traffic Organization will consider any such unused capacity when determining whether to permit additional reservations for unscheduled arrivals at O'Hare.

Conclusion: The FAA proposed to extend the August 2004 order for six months on the basis of its tentative findings that action is needed to prevent a recurrence of overscheduling at O'Hare and that extending the August 2004 order through October 2005 is a rational way of addressing that need, because the order reflects the FAA's agreements with U.S. and Canadian scheduled carriers serving O'Hare. After considering the responses, the FAA has determined to make those findings final and to extend the order until October 29, 2005.

Accordingly, with respect to scheduled flight operations at O'Hare, *it is ordered that*:

1. Ordering paragraph seven of the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport is amended to state that the order shall expire at 9 p.m. on October 29, 2005.

Issued in Washington, DC, on March 21, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–5883 Filed 3–22–05; 10:04 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
March 25, 2005

Part V

Department of Health and Human Services

Announcement of Availability of Funds for Family Planning General Training and Technical Assistance Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Family Planning General Training and Technical Assistance Projects

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

Announcement Type: Initial Competitive Grant.

CFDA Number: 93.260.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Office of Grants Management no later than May 24, 2005. Applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management no later than 5 p.m. Eastern time on the application due date. Applications will not be accepted by fax, nor will the submission deadline be extended. The application due date requirement specified in this announcement supercedes the instructions in the OPHS–1. Applications which do not meet the deadline will be returned to the applicant unread. See heading ''APPLICATION and SUBMISSION INFORMATION'' for additional information. Executive Order 12372 comment due date: The State Single Point of Contact (SPOC) has 60 days from the due date to submit any comments.

SUMMARY: This announcement seeks applications from public and nonprofit private entities to establish and operate one general training and technical assistance project in each of the ten PHS regions. The purpose of the family planning general training program is to ensure that personnel working in Title X family planning service projects have the knowledge, skills, and abilities necessary for the effective delivery of high quality family planning services. General training also includes specialized technical assistance which consists of specific, specialized, or highly skilled family planning training that is usually provided to a single organization based on identified need. Successful applicants will be responsible for the development and overall management of the general training program within the PHS region for which the grant is awarded.

I. Funding Opportunity Description

The Office of Population Affairs (OPA) announces the availability of approximately $4,000,000 in Fiscal Year (FY) 2005 funds, inclusive of indirect costs, to support ten Family Planning General Training and Technical Assistance projects, as authorized under section 1003 of the Public Health Service (PHS) Act. Funds are available to provide both training and specialized technical assistance to family planning personnel in order to maintain the high level of performance of family planning services projects funded under Title X of the PHS Act. The Office of Population Affairs solicits applications for competing grant awards to support one general training center in each of the ten Department of Health and Human Services (DHHS) regions.

Applicant organizations must demonstrate significant experience in the design, development, implementation, successful completion, and evaluation of training activities. In addition, the successful applicant must demonstrate skill and experience in providing training to diverse, community-based entities. The successful applicant will provide evidence of familiarity with family planning and reproductive health issues, and the ability to translate evidence-based information into training activities.

Awards will be made only to those organizations or agencies which have met all applicable requirements and which demonstrate the capability of providing the proposed services.

Program Statute and Regulations

Title X of the PHS Act, 42 U.S.C. 300 *et seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants ''to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).'' The broad range of services should include abstinence education. Section 1003 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to provide the training for personnel to carry out family planning service programs. Section 1008 of the Act, as amended, stipulates that ''none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.''

The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service providers. Prospective applicants should refer to the regulations in their entirety. Training provided must be in accordance with the requirements regarding the provision of family planning services under Title X. These requirements can be found in the Title X statute, the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the ''Program Guidelines for Project Grants for Family Planning Services,'' (January 2001). Copies of the Title X statute, regulations, and ''Program Guidelines'' can be obtained by contacting the OPHS Office of Grants Management or may be downloaded from the Office of Population Affairs (OPA) Web site at *http://opa.osophs.dhhs.gov.* Applicants should use the legislation, regulations, and other information included in this announcement to guide them in developing their applications.

II. Award Information

This notice announces the availability of approximately $4,000,000 in FY 2005 funds and solicits applications for general training and technical assistance projects to assist in the establishment and operation of one regional training center in each of the ten PHS regions. Grants will be funded in annual increments (budget periods) and may be approved for project periods of up to three years.

Table I below sets out the approximate funding levels for grants in each of the PHS regions. Please note that the amounts listed are inclusive of indirect costs. Funding of individual grants will be based on the Regional Health Administrator's (RHA's) assessment of such factors as the training and specialized technical assistance needs within the region, and the cost and availability of personnel for the project.

Competing grant applications are invited for training and technical assistance projects as follows:

TABLE I

Region	States	Approximate funding available
I	CN, ME, MA, NH, RI, VT	$330,000
II	NJ, NY, PR, VI	420,000
III	DE, DC, MD, PA, VA, WV.	450,000
IV	KY, MS, NC, TN, AL, FL, GA, SC.	500,000
V	IL, IN, MI, MN, OH, WI	460,000
VI	AR, LA, NM, OK, TX	430,000
VII	IA, KS, MO, NE	330,000
VIII	CO, MT, ND, SD, UT, WY.	330,000
IX	AZ, CA, HI, NV, and the 6 U.S. Associated Pacific Jurisdictions.	390,000
X	AK, ID, OR, WA	330,000

III. Eligibility Information

1. Eligible Applicants

Any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a grant under this announcement. Faith-based organizations are eligible to apply for these Title X family planning training and technical assistance grants.

2. Cost Sharing

A match of non-Federal funds is not required.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested from, and applications submitted to: OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; 301–594–0758. Application kits are also available online through the OPHS electronic grants management Web site at *https://egrants.osophs.dhhs.gov,* and requests may be submitted by FAX at 301–594–9399. Instructions for use of the eGrants system can be found on the OPA Web site at *http://opa.osophs.dhhs.gov* or requested from the OPHS Office of Grants Management.

2. Content and Form of Application Submission

Applications must be submitted on the Form OPHS–1 (Revised 8/04) and in the manner prescribed in the application kit. Applications should be limited to 50 double-spaced pages, not including budget, budget justification, required forms, and appendices, using an easily readable serif typeface such as Times Roman, Courier, or GC Times, 12 point font. All pages, charts, figures, and tables should be numbered. The application narrative should be numbered separately and clearly show the 50 page limit. If the application narrative exceeds 50 pages, only the first 50 pages of the application narrative will be reviewed. Appendices may provide curriculum vitae, organizational structure, examples of organizational capabilities, or other supplemental information which supports the application. However, appendices are for supportive information only. All information that is critical to the proposed project should be included in the body of the application. Appendices should be clearly labeled.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps needed to obtain one. Instructions for obtaining a DUNS number are included in the application package, and may be downloaded from the OPA Web site.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents.

Application Content

The applicant should demonstrate knowledge of evidence-based learning theory and adult learning behavior, and the applicability to proposed training activities. The design of all training programs, including all curricula and materials, must be consistent with Title X statute and regulations.

The applicant should demonstrate willingness to work closely with other Title X-funded training projects, including other regional training centers, the male training center, and the national training center. In addition, the applicant should demonstrate willingness to work with other Federal, State, and/or local government entities; family planning service providers; other community-based organizations; and other training providers (e.g., Health Resources and Services Administration (HRSA) AIDS Education Training Centers (AETCs), Centers for Disease Control and Prevention (CDC) Prevention Training Centers (PTCs), Administration for Children and Families (ACF) Infant Adoption Awareness Training Program (IAATP), etc.) to maximize resources and achieve program objectives.

The grantee will be responsible for all costs associated with training program administration and management, as well as any costs directly associated with Title X-sponsored training events (e.g., educational materials, classroom and training sites, etc.). Successful applicants will be expected to participate in at least two national meetings per year at the request of the Office of Family Planning, and should budget accordingly. Applicants should demonstrate flexibility in resource utilization, including training plan design, in order to respond to national training priority topics, new initiatives, and program need during each year of the project period.

The following priorities represent overarching goals for the Title X program. Proposals should be developed considering Title X program priorities, legislative mandates, and key issues as they relate to training needs within Title X service projects. Additionally, specific national training priorities will be identified for each year of the project period.

Program Priorities

1. Assuring continued high quality family planning and related preventive health services that will improve the overall health of individuals;
2. Assuring access to a broad range of high quality clinical family planning and related preventive health services that include the following: provision of highly effective contraceptive methods; breast and cervical cancer screening and prevention that corresponds with nationally recognized standards of care; STD and HIV prevention education, counseling, and testing; extramarital abstinence education and counseling; and other preventive health services. The broad range of services does not include abortion as a method of family planning;
3. Encouraging family participation in the decision of minors to seek family planning services, including activities that promote positive family relationships;
4. Improving the health of individuals and communities by partnering with community-based organizations (CBOs), faith-based organizations (FBOs), and other public health providers that work with vulnerable or at-risk populations;
5. Promoting individual and community health by emphasizing family planning and related preventive health services for hard-to-reach populations, such as uninsured or under-insured individuals, males, persons with limited English proficiency, adolescents, and other vulnerable or at-risk populations.

Legislative Mandates

The following legislative mandates have been part of the Title X appropriations for each of the last several years. In developing a proposal, each applicant should describe how the proposed project will provide training that addresses each of these legislative mandates.

''None of the funds appropriated in this Act may be made available to any entity under Title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides

counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities;'' and

''Notwithstanding any other provision of law, no provider of services under Title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.''

Other Key Issues

In addition to the Program Priorities and Legislative Mandates, the following Key Issues have implications for Title X services projects and should be acknowledged in the program plan:

1. The increasing cost of providing family planning services;
2. The U.S. Department of Health and Human Service priorities, initiatives, and Healthy People 2010 objectives as they relate to family planning and reproductive health *(http://www.health.gov/healthypeople)*;
3. Departmental initiatives and legislative requirements, such as the Health Insurance Portability and Accountability Act (HIPAA); Infant Adoption Awareness Training Program (IAATP); providing adolescents with information, skills and support to encourage sexual abstinence; serving persons with limited English proficiency;
4. Integration of HIV/AIDS services into family planning programs; specifically, HIV/AIDS education, counseling, and testing either on-site or by referral should be provided in all Title X family planning services projects. Education regarding the prevention of HIV/AIDS should incorporate the ''ABC'' approach. That is, for adolescents and unmarried individuals, the message should include ''A'' for abstinence; for married individuals or those in committed relationships, the message is ''B'' for be faithful; and, for individuals who engage in behavior that puts them at risk for HIV, the message should include ''A,'' ''B,'' and ''C'' for correct and consistent condom use.
5. Utilization of electronic technologies, such as electronic grants management systems;
6. Data collection and reporting which is responsive to the revised Family Planning Annual Report (FPAR) and other information needs for monitoring and improving family planning services;
7. Service delivery improvement through utilization of research outcomes focusing on family planning and related population issues; and
8. Utilizing practice guidelines and recommendations developed by recognized professional organizations and other Federal agencies in the provision of evidence-based Title X clinical services.

National Training Priorities for 2005

During the FY 2005 year, it is expected that each general training and technical assistance grantee, funded with FY 2005 funds, will provide training that will assist Title X service providers with addressing the following:

1. Encouraging family participation in the decision of minors to seek family planning services and providing counseling to minors on how to resist attempts to coerce minors into sexual activities;

2. Complying with State laws requiring the notification or reporting of child abuse, child molestation, sexual abuse, rape, or incest; and

3. Integrating HIV prevention activities into Title X services.

Applicants should demonstrate a broad range of expertise and skill in providing training programs, managing training resources, and working with consultants and service providers. Applicants should demonstrate the capacity to utilize electronic technologies and evidence-based training delivery techniques. Applicants should include evidence of the ability to provide training that prepares family planning project personnel to increase effectiveness in working with persons of differing educational and physical abilities.

The proposal should demonstrate the applicants's expertise and ability to develop, implement, and evaluate training in the areas of information, education and communication; program management; and clinical service delivery. Applicants should indicate the ability to provide continuing education credits as appropriate (e.g., continuing education credit for nurses, health educators, social workers, etc.). Within each of the areas mentioned above, at a minimum, the grantee will be expected to provide training for Title X personnel that includes the following topics:

Information, Education and Communication

- Increasing effectiveness in working with hard-to-reach and diverse populations, including racial, ethnic, cultural, and linguistic minorities, to reduce health disparities;
- Use of electronic technologies in program activities and management;
- Incorporation and/or use of various media modalities to assist in achieving program goals and objectives.

Program Management

- Improving the management skills of family planning grantee staff;
- Increasing the ability of family planning grantee staff to assess, plan, design, and utilize management information systems;
- Designing, implementing, and utilizing data reports in project operations;
- Utilizing financial systems to monitor, track, record, and control Title X and other financial resources according to Federal grants requirements;
- Incorporating current information related to privacy and transmission of client information into grantee operations;
- Improving program efficiency and enhancing cost savings and recovery mechanisms; and
- Collecting and reporting all data elements required for the Family Planning Annual Report (FPAR).

Clinical Activities

- Improving the performance of clinical staff (professional and other) involved in health care delivery through continuing education and quality assurance activities;
- Educational clinical activities addressing intimate partner violence;
- Clinical topics including current acceptable and effective contraceptive methods and other issues and technologies which effect family planning service delivery;
- Title X Program requirements and legislative mandates, including training on involving parents in the decision of minors to seek family planning services; counseling minors on resisting attempts to coerce them into engaging in sexual activity; and compliance with state laws regarding reporting or notification of child abuse, child molestation, sexual abuse, rape, or incest;
- Provision of abstinence education;
- Incorporating the ''ABC'' approach to HIV prevention counseling; and
- Best practices for presenting non-directive counseling, including adoption counseling for pregnant clients.

Specialized Technical Assistance

In addition to providing general training on the issues mentioned above, successful applicants must also demonstrate the capacity to develop and implement a system for providing technical assistance to Title X service providers in the applicable PHS region. Technical assistance consists of specific, specialized or highly skilled family planning training that is usually

provided to a single organization based on an identified need. The objective of this assistance is to provide projects with the technical resources needed to address Title X priorities and key issues impacting family planning.

A portion of the total grant award will be earmarked for technical assistance, and a final budget will be negotiated between the successful applicant and the PHS Regional Project Officer. All technical assistance provided with grant funds must have prior approval of the PHS Project Officer.

Evaluation

The applicant is responsible for developing and implementing an evaluation plan which assesses the overall training program, as well as each training event and technical assistance provided. The plan should include evaluation of the content of training events, delivery mechanisms utilized, accessability for Title X providers, and how well the offerings met the needs of the trainee and sponsoring agency. Evaluation of technical assistance should include expertise of the consultant related to the identified need of the service provider, as well as whether the assistance resulted in the improved knowledge, skills, and/or abilities required.

3. Submission Dates and Times

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic Submissions Via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov*, or may be requested from the OPHS Office of Grants Management at 301–594–0758.

The body of the application and required forms can be submitted using the OPHS eGrants system. In addition to electronically submitted materials, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms with the original signature of an individual authorized to act for the applicant agency or organization. The application will not be considered complete until both the electronic application components submitted via the OPHS eGrants system and any hard copy materials or original signatures are received.

Electronic grant application submissions must be submitted via the OPHS eGrants system no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Any application submitted electronically after 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hardcopy original signatures and required mail-in items to the OPHS Office of Grants Management by 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement will result in the electronic application being deemed ineligible.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions Via the Grants.gov Web Site Portal

The Grants.gov Web site Portal provides for applications to be submitted electronically. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.* The body of the application and required forms can be submitted using the Grants.gov Web site Portal. Grants.gov allows the applicant to download and complete the application forms at any time, however, it is required that organizations successfully complete the necessary registration processes in order to submit the application to Grants.gov.

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, excluding the standard forms included in the Grants.gov application package (*e.g.*, Standard Form 424 Face Page, Standard Assurances and Certifications (Standard Form 424B, and Standard Form LLL) must be submitted separately

via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Electronic grant application submissions must be submitted via the Grants.gov Web site Portal no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement. Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Any application submitted electronically via the Grants.gov Web site Portal after 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hardcopy original signatures or materials to the OPHS Office of Grants Management by 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement will result in the electronic application being deemed ineligible.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials. Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants are encouraged to initiate electronic applications via the Grants.gov Web site Portal early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline. Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Mailed or Hand-Delivered Hard Copy Applications

Applications submitted in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

Applicants under this announcement are subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for the state in which the applicant is located. The application kit contains the currently available listing of the SPOCs that have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOC should forward any comments to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20852. The SPOC has 60 days from the due date as listed in the **DATES** section of this announcement to submit any comments. For further information, contact the OPHS Office of Grants Management at 301–594–0758.

5. Funding Restrictions

The allowability, allocability, reasonableness and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

Indirect costs are limited to eight percent (8%) of modified total direct costs as a flat amount for reimbursement under training grants (Grants Policy Directive Part 3.01: Post-Award-Indirect cost and other Cost Policies, HHS transmittal 98.01).

6. Other Submission Requirements

None.

V. Application Review Information

1. Criteria

1. The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations at 42 CFR part 59.205 (25 points);

2. The extent to which the training program promises to fulfill the family planning service delivery needs of the area to be served, which may include among other things:

(i) Development of a capability within family planning service projects to provide pre- and in-service training to their own staffs;

(ii) Improvement of the family planning services delivery skills of family planning services delivery skills of family planning and health services personnel;

(iii) Improvement in the utilization and career development of paraprofessional and paramedical manpower in family planning services;

(iv) Expansion of family planning services, particularly in rural areas, through new or improved approaches to program planning and deployment of resources; (20 points total for this section).

3. The extent to which the proposed training and technical assistance program will increase the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services (15 points);

4. The administrative and management capability and competence of the applicant (15 points);

5. The competence of the project staff in relation to the services to the services to be provided (15 points); and

6. The capacity of the applicant to make rapid and effective use of the grant assistance, including evidence of flexibility in the utilization of resources and training plan design (10 points).

2. Review and Selection Process

Each Regional Office is responsible for evaluating applications and setting funding levels according to the criteria set out in 42 CFR 59.207 (b). Eligible applications will be reviewed by a panel of independent reviewers and will be evaluated based on the criteria listed above. In addition to the independent review panel, there will be staff reviews of each application for programmatic and grants management compliance.

Final award decisions will be made collaboratively by the Regional Health Administrator (RHA) for the applicable PHS Region, in consultation with the Director, OFP and the Deputy Assistant Secretary for Population Affairs (DASPA). In making grant award decisions, one grant will be awarded in each region which best promotes the purposes of sections 1001 and 1003 of the Act, within the limits of funds available for such projects. The decision will take into account the reasonableness of the estimated cost considering the available funding, and the benefits expected.

VI. Award Administration Information

1. Award Notices

The OPA does not release information about individual applications during the review process. When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award (NGA), signed by the Director of the OPHS Office of Grants Management. This document specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, terms and conditions of the grant award, and the amount of funding, if any, to be contributed by the grantee to project costs. In addition, the NGA identifies the Grants Specialist and Programmatic Project Officer assigned to the grant.

Grants will be awarded for project periods of up to three years. Grants will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The successful applicant will be responsible for the overall management of activities within the scope of the approved project plan, and will be required to work closely with the PHS Project Officer in the respective region. The Project Officer will review and approve all Regional training plans, technical assistance requests, and plans for the use of Regional resources as part of this grant. In addition, both the OPA Central Office and the respective Regional Office will review and approve training plans related to the identified annual national training priorities.

The OPHS requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the ''Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs'' was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb*.

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Federal grant support must be acknowledged in any publication developed or training provided using Title X funds. The grantee will be expected to make available, at cost, all materials developed with Title X funds as requested by other Title X projects.

3. Reporting

Each year of the project period, grantees are required to submit a non-competing application which includes annual progress report and project work plan and budget for the upcoming year. The progress report must contain, at a minimum, a report on the evaluation of the training program as a whole, as well as the following data related to training activities supported with grant funds:

For ''on-site'' training events: (a) Title of training event; (b) location; (c) topic(s) covered; (d) presenter(s) (as applicable); (e) number of participants; (f) agencies sponsoring participants; and (g) evaluation summary; (h) credit hours or CEUs available. For ''distance learning'' training events: (a) Title of training; (b) number/location (downlink sites, web hits, media copies, etc., as appropriate); (c) topic(s) covered; (d) presenters; (e) agencies participating; (g) evaluation summary; (h) credit hours or CEUs available. In addition, grantees must maintain and submit a log of all technical assistance provided which includes, at a minimum: (a) Grantee/delegate agency requiring technical assistance; (b) topic/content; (c) number of days of technical assistance required; (d) consultant(s) hired to provide technical assistance; and (e) outcome of technical assistance provided.

Grantees are required to submit an annual Financial Status Report within 90 days after the end of each budget period. Grantees who receive greater than $500,000 of Federal funds must

also undergo an independent audit in accordance with OMB Circular A–133.

VII. Agency Contacts

Administrative and Budgetary Requirements

For information related to administrative and budgetary requirements, contact the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; 301–594–0758.

Program Requirements

For information related to family planning program requirements, contact the Regional Program Consultant for Family Planning in the applicable Regional Office listed below:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)—Betsy Rosenfeld, Acting, 617–565–4265;

Region II (New Jersey, New York, Puerto Rico, Virgin Islands)—Robin Lane, 212–264–3935;

Region III (Delaware, Washington, DC, Maryland, Pennsylvania, Virginia, West Virginia)—Donna Garner, 215–861–4624 or Dickie Lynn Gronseth, 215–861–4656;

Region IV (Kentucky, Mississippi, North Carolina, Tennessee, Alabama, Florida, Georgia, South Carolina)—Cristino Rodriguez, 404–562–7900;

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)—Janice Ely, 312–886–3864;

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)—Evelyn Glass, 214–767–3088;

Region VII (Iowa, Kansas, Missouri, Nebraska)—Elizabeth Curtis, 816–426–2924;

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)— Jill Leslie, 303–844–7856;

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federal States of Micronesia, Republic of the Marshall Islands)—Nancy Mautone-Smith, 415–437–7984;

Region X (Alaska, Idaho, Oregon, Washington)—Janet Wildeboor, 206–615–2776.

Dated: March 16, 2005.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 05–5946 Filed 3–24–05; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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S. 686/P.L. 109–3

For the relief of the parents of Theresa Marie Schiavo. (Mar. 21, 2005; 119 Stat. 15)

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